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## IMPORT OF SECTION 23-C OF ACT (IV OF 1938)

*By*

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The recent decision of N.S. Ramaswamy, J., in *R.Dharmarajan* v. *Nagalinga Khandiar and another*[1], holding that section 23-C of the Tamil Nadu Agriculturists Relief Act (IV of 1938) is inapplicable to execution sales conducted after the commencement of the Tamil Nadu Agriculturists Relief (Amendment) Act, 1972 is bound to have serious repercussions with the judgment-debtors being denied privileges which the legislature has granted through the passing of the Act VIII of 1973.

Section 23-C of the Act IV of 1938 as amended by Act VIII of 1973 runs as follows :

" Where in execution of any decree, any immovable property in which any person entitled to the benefits of the Tamil Nadu Agriculturists Relief (Amendment) Act, 1972, had an interest, has been sold or foreclosed on or after the 1st March, 1972 and the sale has not been confirmed before the publication of the said Act in the Tamil Nadu Government Gazette, or ninety days have not elapsed from the confirmation of the sale or from the foreclosure, at such publication, then, notwithstanding anything contained in the Limitation Act, 1963 (Central Act XXXVI of 1963), or in the Code of Civil Procedure, 1908 (Central Act V of 1908); and notwithstanding that the sale has been confirmed, any judgment-debtor claiming to be entitled to the benefits of the said Act, may apply to the Court within 90 days of such publication or of the confirmation of sale, whichever is later, to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is a person entitled to the benefits of the said Act, order the sale or foreclosure to be set aside, and thereupon the sale or foreclosure shall be deemed not to have taken place at all :

Provided that no such order shall be made without notice to the decree-holder, the auction-purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter."

N.S. Ramaswamy, J., seems to have observed in *R. Dharmarajan* v. *Nagalinga Khandiar and another*[2] " It is significant to note that in the first part of the section it is stated that the sale has to be after the first March, 1972 and the same should not have been confirmed before the publication of Act VIII of 1973 or ninety days have not elapsed from the confirmation of the sale or from the foreclosure at such publication. This clearly indicates that the sale which is sought to be set aside should have taken place prior to the publication of Act VIII of 1973. Then only the question of the sale not having

1. *See* (1975) T.L.N.J. 19.

2. *See* (1975) T.L.N.J. 19.

been confirmed before the publication of the said Act or ninety days having not elapsed from such confirmation would arise." With great respect, I must say, that this has not properly interpreted the meaning of section 23-C with the result that the real intention and purpose for which the amendment was made will not serve the purpose to the aggrieved agriculturists taking shelter under the provision of this enactment. In the second part in the section 23-C the words "may apply to the Court within 90 days of such publication or of the confirmation of sale, whichever is later" could only mean that any sale which has been confirmed and from the date of which 90 days have not passed could be set aside under section 23-C of Act IV of 1938, even though it was after the publication of the Act VIII of 1973. In the case decided by N.S. Ramaswamy, J., a money decree had been passed on 27th October, 1971. Execution in pursuance of the decree was taken and the property was sold on 19th September, 1973. The sale was confirmed on 31st October, 1973. The application to set aside the sale was filed on 21st January, 1974 by the judgment-debtor. According to the learned Judge since the Act VIII of 1973, was published in the Tamil Nadu Government Gazette on 24th January, 1973 and the sale itself was very much subsequent to the publication of the Act the application under section 23-C of Act IV of 1938 was not maintainable. According to him the judgment-debtor's remedy in such cases, is to apply to the court which passed the decree to scale down the debt under section 19 of the Act. With great respect I would like to stress that even this remedy would not save the judgment-debtor as according to the learned Judge applications filed under section 23-C of Act IV of 1938, after 24th January, 1973 to set aside execution sales are not maintainable. Supposing the judgment-debtor in *R. Dharmarajan* v. *Nagalinga Khandiar and another*[3] had filed an application under section 19 of the Act for amendment after scaling down the debt and the same was allowed much earlier to his filing of the application under section 23-C and the sale after the publication of the Act VIII of 1973 had taken place for the amount claimed by the decree-holder and not to the amount scaled down and amended as per section 19 of the Act, then, can we regard the petition under section 23-C to set aside the sale as maintainable? Even then, as per the decision of N.S. Ramaswamy, J., the sale will not be set aside because the sale had taken place after the publication of Act VIII of 1973. Viewing this on any ground and reading the provisions of Act IV of 1938 with the amendments that have been effected by Act VIII of 1973 it would seem that section 23-C has not received a proper interpretation in the case under notice (This is subject to the availability of the full text as only "notes" of the decision has been published in the Tamil Nadu Law Notes Journal) with the result the real intention and purpose for which section 23-C has been inserted are likely to be frustrated placing the indebted agriculturists coming under the enactments to great loss and difficulties. The same point was also discussed at the time when section 23-A was inserted by the Amending Act of 1948. Section 23-A in Act IV of 1938 applied only to cases of sales or foreclosures before the commencement of the Amending Act XXIII of 1948 and which had not been confirmed before such commencement or ninety days had not elapsed from the confirmation of sale or from the foreclosure at such commencement. The Select Committee, realising the hardships to

3. *See* (1975) T.L.N.J. 19.

which the agriculturists whose properties were sold subsequent to Act IV of 1938 were likely to be subjected, suggested the application of the section to sales or foreclosures effected on or after 30th. September, 1947. The suggestion in the form of an amendment was moved by Mr. Mohammad Salam Sahib Bahadur, who observed that the amendment aimed at reopening all the sales, whether confirmed or not, that have taken place from the publication of the Bill and will provide relief to the agriculturists even in respect of sales that have taken place after the publication of the Bill. But Mr. K. Madhava Menon, while agreeing with the necessity of such amendment pleaded for its withdrawal taking into consideration the result of reopening a large number of sales that have already been concluded which will affect the Court-auction-purchasers and their rights and will definitely create difficulty regarding the sales that have already been confirmed. The amendment was withdrawn after an elaborate discussion. The Division Bench consisting of M. M. Ismail and Natarajan, JJ., in the case *R. M. AR. RM. Ramanatha Chettiar* (alias) *R. M. AR. Ramanatham Chettiar* v. *S. M. O. Oomanathan Chettiar* and *S. M. O. Othaman Chettiar* v. *A. R. R. M. Valliammai Achi*[4], has observed while interpreting Explanation 1 to section 8 introduced by the Amending Act XXIII of 1948 and as amended further by Act VIII of 1973, "We are of the opinion that the reports of the Select Committee cannot be taken into account by a Court as an aid to construction of statutes, though they may be referred to for ascertaining the conditions prevailing at the time when the statute was enacted and the purpose of making a particular amendment. The object of all interpretation is to discover the intention of the Legislature and the intention of the Legislature must be deduced from the language used, for it is well accepted that beliefs and assumptions of those who frame Acts of Parliament cannot make the law *Vide* Maxwell on Interpretation of Statutes 12th Edition page 28". How the true scope and effect of the relevant words in any statutory provision could be decided is explained in the case *Sheik Gulfan and others* v. *Sanat Kumar*[5], where the Bench consisting of Gajendragadkar, C. J., Hidayatullah and Ramaswamy, JJ., interpreting a provision in the Calcutta Thika Tenancy Act (W. B. Act II of 1949) observed: "Normally, the words used in a statute have to be construed in their ordinary meaning; but in many cases judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included and the policy underlying the statute assume relevance and become material". The recent decision in *Yeshbai and another* v. *Ganpat Irappa Jangam and another*[6], while applying the principles enunciated in *Sheik Gulfan and others* v. *Sanat Kumar*[5], for interpreting

4. (1974) 1 M.L.J. 221.

5. (1965) 2 S.C.J. 839: (1965) 3 S.C.R. 364: A.I.R. 1965 S.C. 1839 at 1845.

6. A.I.R. 1975 Bom. 20.

statutes has observed, "Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words." The object of Act VIII of 1973 is to further amend the Tamil Nadu Agriculturists Relief Act, 1938 for the purpose of extending the latter Act to the transferred territory in the State of Tamil Nadu and to provide relief to the indebted agriculturists and to rehabilitate agriculture in the State of Tamil Nadu taking into consideration the economic well-being of the agriculturists. The Madras Agriculturists Relief (Amendment) Act XXIII of 1948 was enacted for the purpose of removing the difficulties and defects noticed in the working of some of the provisions in Act IV of 1938. Section 23-A was introduced by Act XXIII of 1948, an amendment to section 23 inserted by Madras Act XIII of 1938. Further amendment to section 23-A was found necessary for the words "the sale has not been confirmed before the commencement of the said Act or ninety days have not elapsed from the confirmation of the sale or from the foreclosure, at such commencement" by substituting the words "whether confirmed subsequently or not." This suggestion for the proposed amendment was thought fit to be given up for the reason "all sales confirmed after the 30th September, 1947, without restriction as to whether 90 days have or have not elapsed from the confirmation of the sale or foreclosure at such commencement of the Act" will result in the reopening of a large number of sales that have already concluded will affect the purchasers at Court-auction-sales or those who on the strength of the properties purchased lent money to the purchasers. But one significant factor not noticed by the legislators and the framers of the Acts (both the principal and the later amendments) is that the real object of relieving the difficulties of indebted agriculturists could not be said to have been achieved if only a temporary measure for a fixed period for setting aside sales is enjoined in the enactments. The rights of filing applications and setting aside sales should also apply after the publication of the Act. Further section 7 of Act IV of 1938 as amended by Act VIII of 1973 mentions the date of the commencement of the Act as 1st March, 1972 and the 2nd paragraph of the section in the Principal Act states: "No sum in excess of the amount as so scaled down shall be recoverable from him or any land or interest in land belonging to him: nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum so scaled down under this Chapter." Section 7 of Act VIII of 1973 read with section 8 of Act IV of 1938 mentions the manner in which the debts entitled for consideration of benefit under section 7 of Act IV of 1938 shall be scaled down. Section 19 of the Principal Act read with section 15 of Act VIII of 1973 mentions the manner in which an application for amendment of a decree could be filed after scaling down the debt as per the Act. According to the decision under notice application under section 23-C of Act VIII of 1973 could be filed only in respect of sales which took place on the date of the publication of Act VIII of 1973 (*i.e.*, 1st March, 1972) and the sales in order to be attracted by the enactment should take place either on 1st March, 1972 or after that date but the sales should not have been confirmed before the publication in the Tamil Nadu Government Gazette (24th January, 1973). It is further observed

in that case that since the sale had taken place in the month of September, 1973 nearly 8 months after the publication of Act VIII of 1973, section 23-C had no application and the sale could not be set aside. According to the interpretation of the words in section 23-C made N. S. Ramaswami, J., in the case under notice it would appear that the section as such is no longer necessary and, has, therefore, to be deleted. If section 23-C does not apply to sales held after the publication of Act VIII of 1973, then, no application for scaling down the debt under sections 7 and 8, section 19 for amendment of the decree and section 20 for stay of execution of the decree passed need be filed. Even at present, in most of the mofussil Courts when applications for stay are filed before the dates of sales, they are adjourned after the dates fixed for the conduct of sales without granting the reliefs prayed for observing that the applications are intended only to defeat the debts of their creditors forgetting that the Legislature permits the filing of such petitions with the object of relieving the indebted agriculturists from their difficulties and save their properties from being sold for improper and insufficient prices.

Section 28 of Act IV of 1938 read with section 24 of Act VIII of 1973 empowers the Provincial Government to make necessary rules for carrying into effect the purposes of the Act. The Tamil Nadu Government should take steps to make the rule to amend section 23-C of Act VIII of 1973 granting the agriculturists-judgment-debtors the relief of approaching the Courts for setting aside execution sales even after the publication of Act in the Tamil Nadu Government Gazette (*i.e.*, 24th January, 1973) and also delete the words "at such publication" appearing in both the 1st and 2nd parts of section 23-C of the Act. Since the Division Bench in *R.M.A.R RM. Ramanatha Chettiar* alias *R.M.AR. Ramanatham Chettiar* v. *S.M.O. Oomanathan Chettiar and S.M.O. Othaman Chettiar* v. *A.R.R.M. Valliammai Achi*[7], has expressed its opinion that the intention of the Legislature and the language used could be interpreted by Courts and not the Select Committee or the legislators, the rule as suggested for amendment of section 23-C of Act VIII of 1973 should desirably be referred to a Full Bench for interpretation.

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7. (1974) 1 M.L.J. 221.

## A CRITICAL NOTE ON THE MEANING OF "SUB-TENANT" OCCURRING IN SECTION 2 (aa) OF THE TAMIL NADU CULTIVATING TENANTS' PROTECTION ACT, 1955.

*By*

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The true meaning of the word "SUB-TENANT" occurring in section 2 (*aa*) of the Tamil Nadu Cultivating Tenants' Protection Act, 1955 (hereinafter referred to as the Act) requires clarification. Sub-tenant is readily understood to mean all kinds of underlessees from a chief tenant under a landlord in respect of an agricultural holding or a parcel or parcels of land held by the main tenant. But a serious doubt is posed against this popular meaning of the word. The question is whether the term sub-tenant occurring in the Act embraces all persons who are underlessees in respect of an agricultural holding or is limited only to a category of persons who claim to be sub-tenants under a main tenant who himself is not a cultivating tenant entitled to the benefit and protection of the Act.

The definition of the word 'cultivating tenant' in section 2 (*aa*) of the Act of 1955 as amended by Ordinance 1 of 1958 runs as follows:

2 (*aa*) "cultivating tenant" in relation to any land

(1) means a person who carries on personal cultivation on such land, under a tenancy agreement express or implied, and

(2) includes : (*i*) any such person as is referred in sub-clause (1) who continues in possession of the land after the determination of the tenancy agreement;

(*ii*) in the District of Tiruchirapalli, a Kaiaeruvaramdar or a mattuvaramdar who works on the land under an engagement with the landlord for remuneration by a share in the crop in respect of which the work is done; and

(*iii*) the heirs of any such person as is referred to in sub-clause (1) or sub-clause (2) (*i*) and (*ii*) but does not include a mere intermediary or his heirs.

*Explanation :* A sub-tenant shall be deemed to be a cultivating tenant of the holding under the landlord if the lessor of such tenant has ceased to be the tenant of such landlord".

The definition of a cultivating tenant was amended by Act IX of 1969. The amended section is as follows:

(*aa*) "Cultivating tenant"

(i) means a person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another under a tenancy agreement express or implied; and

(ii) includes :

(*a*) any such person who continues in possession of the land after the determination of the tenancy agreement;

(*b*) the heir of such person, if, the heir contributes, his own physical labour or that of any member of his family in the cultivation of such land;

(*c*) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or

(*d*) any such sub-tenant who continues in possession of the land notwithstanding that the person who sub-let the land to such sub-tenant ceases to have the right to possession of such land; but

(iii) does not include a mere intermediary or his heir.

'Personal cultivation' is defined under section 2 (*ee*) of the Act which runs as follows :

"a person is said to carry on personal cultivation on a land when he contributes his own physical labour or that of the members of his family in the cultivation of that land".

The true scope of the word sub-tenant and his right to the protection of the Act has came up before the Courts. In *Venkatrama Iyer* v. *Asan Mohammed Rowther*[1], Srinivasan, J., observed:

"Quite obviously he was a cultivating tenant when he took lease of the lands and by reason of violating certain of the provisions of the Act, he has brought himself within the scope of those provisions which entail eviction. He does not for the sole reason that he sub-leased the lands cease to be a cultivating tenant not amenable to the process of the Act". It follows from the reasoning given by Srinivasan, J., that a person who becomes a cultivating tenant of the land does not cease to be so by losing protection under the Act and subjecting himself to eviction in terms of the Act. So when the status of a cultivating tenant as such does not cease to be so by the mere sub-leasing of the demised land, it follows that there cannot be two cultivating tenants in respect of the same parcel of land and there can be only one cultivating tenant in respect of the said land. The scope and meaning of sub-tenant occurring in the Explanation to section 2 (*aa*) of the Act came up for judicial discussion in *Mottayan* v. *Thambuswami Padayachi*[2], where Natesan, J., observed : "With reference to the same parcel of land there cannot be two cultivating tenants. There can only be one cultivating tenant with reference to one parcel of land. But a cultivating tenant cannot secure to his under-lessee the status of a cultivating tenant under the owner by offering to surrender his tenancy. He enjoys certain immunities and after having had the benefits for a while, he cannot simply walk out of the picture putting up another as the cultivating tenant, the process getting repeated. The Act while protecting a class of tenants seeks to secure to the landlord his lawful rent in a summary way. To permit cultivating tenants to walk out may deprive the landlord of some of the reliefs conferred on the landlord under the Act. It may be that the Legislature while protecting the cultivating tenants who lawfully came on the land did not want them to foist on the landlord irrespective of his inclinations strangers as cultivating tenants. It is one thing if the landlord had left the choice of the tenants of his land in general to a farmer of rent or an intermediary or his existing tenants had been brought under an intermediary. It is quite a different thing to give a sub-lessee from a protected tenant who has no interest in the land rights of a protected tenant". This decision no doubt related to a tenancy prior to the Amending Act IX of 1969. But it is submitted the decision of the Madras High Court in *Mottaiyan* v. *Thambuswami Padayachi*[3] is still good law irrespective of the amendment of the definition of a 'cultivating tenant' in section 2 (*aa*) of the Act by the Amending Act IX of 1969. Viewed from this point one is led to come to the conclusion that the sub-tenant contemplated under section 2 (*aa*) of the Act as amended by Act IX of 1969 is only a person who obtained a sub-lease of the agricultural holding from a chief tenant who himself was not a cultivating tenant. Sub-clause (*d*) of sub-

1. (1961) 2 M.L.J. 277.
2. (1970) 1 M.L.J. 137.
3. (1970) 1 M.L.J. 137.

section (*ii*) of section 2 (*aa*) of the Act runs as follows: "any such sub-tenant who continues in possession of the land notwithstanding that the person who sublet the land to such sub-tenant ceases to have the right to possession of such land." On a careful scrutiny of this portion of the section one fails to see anything to hold that the sub-tenant referred to therein is a person who obtained the sub-lease from a cultivating tenant. Again the words "notwithstanding that the person who sub-let the land to such sub-tenant ceases to have the right to possession of such land..", occurring in section 2 (*aa*) (ii) (*d*) of the Act go to strengthen the view that the "person" referred to therein is not a 'cultivating tenant'. It is to be noted that there is a significant omission of the words "cultivating tenant" in clauses (*c*) and (*d*) of section 2 (*aa*) (ii) of the Act. The Legislature must have had a purpose in omitting to use certain words. If really the intention of the Legislature is to give the sub-tenants from 'cultivating tenants' the status of a protected tenant then the Legislature would have clearly set out in the section that even sub-tenants from a 'cultivating tenant' is also a 'cultivating tenant'. That is why there is a deliberate and conscious user of the word 'person' in section 2 (*aa*) (ii) (*d*) of the Act. The section uses the word 'person' in relation to the tenancy of the sub-tenant obviously implying that the sub-tenancy is not under a 'cultivating tenant'. There are two expressions in the section. The word "person" is a general expression while the term 'cultivating tenant' is a special expression. The general expression 'person' may include a 'cultivating tenant'. But obviously when in relation to the demised land the word used is "person" the general expression is used in the sense excluding the relationship of a 'cultivating tenant'. Again basing on the proposition laid down in *Venkatrama Iyer* v. *Asan Mohammed Rowther*[4] *viz.*, that a 'cultivating tenant' does not cease to be so by the mere fact of sub-leasing, the expression "notwithstanding that the person who sub-let the land to such sub-tenant ceases to have the right to possession of such land" occurring in section 2 (*aa*) (ii) (*d*) of the Act is of much significance. No doubt the phrase "right to possession" of the land had not been defined in the Act. But section 4 of the Act may be referred to in this context. Section 4 of the Act is captioned as 'right to restoration of possession'. Section 4 (1) of the Act runs as follows : "Every 'cultivating tenant' who was in possession of any land on the 1st December, 1953 and who is not in possession thereof at the commencement of this Act shall, on application to the Revenue Divisional Officer, be entitled to be *restored to possession* on the same terms as those applicable to the possession of the land on the 1st December, 1953" (italics supplied). It is to be noted that the phrase "restored to possession" is used in the Act in relation to a 'cultivating tenant'. So the pharse "right to possession" should be understood in contradistinction to the phrase "right to restoration of possession" and the former should refer to a right accruing to a person who is not a cultivating tenant. That was why the Legislature used the phrase "right to possession" in section 2 (*aa*) (ii) (*d*) of the Act instead of the phrase "right to restoration of possession" thereby intending to confer the status of a 'cultivating tenant' on an underlessee who had derived a tenancy right from a chief tenant who himself was not a 'cultivating tenant'.

Having regard to the scheme of the Act and the language employed in the section one may interpret it in accordance with the general principles applicable thereto. It is stated in Maxwell on the Interpretation of Statutes, 12th Edition, page 199 :

4. (1962) 2 M.L.J. 277.

"In determining either the general object of the Legislature or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice, and legal principles should in all cases of doubtful significance be presumed to be the true one····where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result." We must "do some violence to the words" and so achieve the obvious intention and produce a rational construction".

So it follows that the word sub-tenant occurring in section 2 (*aa*) of the Act refers only to a person who derived a tenancy right from a person who himself is not a 'cultivating tenant'.

It is submitted that if anybody could secure the status of a 'cultivating tenant' by merely getting a sub-lease and without any reference to the status of chief tenant, then the position of the landlord would become precarious. The remedies that were available to the landlord would remain on paper. Further to allow a 'cultivating tenant' to foist on the landlord against the inclination of the latter strangers as sub-tenants would lead to the undesirable situation where the solemn protection and benefit conferred by the statute on the 'cultivating tenant' would be rendered the subject-matter of a cheap trade. A verdict of the Court of law spelling out the true meaning of the word 'sub-tenant' occurring in section 2 (*aa*) of the Act would set at rest the controversy.

## A SUGGESTION FOR AMENDMENT OF ORDER 32, RULE 6 (1), CIVIL PROCEDURE CODE.

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Under Order 32, rule 6 (1), Civil Procedure Code, it is incumbent upon the Court to take sufficient security for payment out of monies belonging to a minor in order, evidently, to safeguard and to ensure their proper utilisation. But this provision is unnecessary and works hardship in 2 classes of cases: (1) amounts in Court realised as a result of maintenance decrees or orders for alimony or interim orders for maintenance under the Hindu Marriage Act and in original suits; (2) costs realised in suits, petitions, appeals, etc.

In cases coming under number 1, it is superfluous to ask for security as the object of the payment, is for maintenance and the minor's guardian is at his wit's end to furnish security himself or to secure another person to give security. Some Courts insist upon immovable property security and it is hard to find one such willing person to give the same. In cases coming under No. 2, the costs awarded in suits or petitions or appeals to the minor's guardian cannot be taken out from Court or recovered from the opposite party except after furnishing security. And some Courts insist upon security of immovable property. It is meaningless to call upon security to be given as the costs to be recovered under decrees or orders of Court have already been spent by payment to the lawyer as per his memo. of costs or expenses of stamp for the suit, petitions, appeals etc., by way of summons, notice batta etc. No question of safeguarding the interests of the minors would arise. Hence I suggest that in Order 32, rule 6 (1) the following clause may be added at the end: "Except where the decree or order in favour of the minor is for costs or for maintenance." This is a suggestion for the Law Commission dealing with the amendment of the Civil Procedure Code.

## BOOK REVIEW

INDUSTRIAL WAGES IN INDIA, by the Indian Chamber of Commerce, Calcutta (Publishers: Eastern Law House Private Ltd., Calcutta), 1974. Price Rs 20.

The problem of industrial wages is closely tied up with the growth and prosperity of the national economy. Supply and demand controlled wage rates at one time. With the development of industries on a large scale, application of mechanical power and new techniques in industries, and growth of trade-unionism the laissez-faire principle had to be jettisoned and Government had to intervene and large-scale legislation was needed to redress the grievances of the labouring classes and improve their living conditions, wages and related matters consistently with conditions prevalent in the country. The Industrial Truce Resolution of 1947 declared : " The system of remuneration to capital as well as labour must be so devised that while in the interests of the consumers and the primary producers excessive profits should be prevented by suitable measures of taxation and otherwise, both will share the product of their common effort after making provision for payment of wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking." With the advent of national planning the ultimate goal was stated to be to provide each worker with a "living wage" (*see* Article 43 of the Constitution). Also a system of tripartite consultation among the Government, the employers and the employees had been evolved and the main forum for the purpose is the Indian Labour Conference and its associate Committees. At the present time labour is demanding that wages should be linked with the cost of living.

The book under notice deals with industrial wages in this country in 8 chapters. The first chapter deals with the historical background and the remaining chapters are devoted to particular aspects of the wage question including dearness allowance and other allowances and benefits, work-hours, leave and holidays, unemployment benefit etc. There are 3 Appendices containing miscellaneous material and useful information. The book furnishes a lucid and comprehensive survey of industrial wages in this country. It is bound to be a very useful handbook to management and employees and to all concerned with the problem of industrial wages.

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INDUSTRIAL AND LABOUR REFERENCE by *D. S. Chopra*. (Publishers : Eastern Law House Private Ltd., Calcutta), 1975. Price Rs. 40 : £ 5 : $12.

There has been a spate of legislation on matters of labour and industry, particularly after the attainment of independence. A mass of case law also has developed giving rise to a new jurisprudence and the process is continuing. It has been remarked with some justification that the result is one of " statutory chaos and legal anarchy", making it somewhat difficult for any one to spot out the latest and correct position of law on any aspect of industrial and labour law.

The present book endeavours to serve as a ready reference book on industrial and labour law. It takes up the important statutes bearing on the subject, makes out a list of the various aspects of labour law and the subjects on which the decisions of the Courts are to be analysed. The ratio of the cases is sifted and the law is presented. Among the Acts so taken up are : The Apprentices Act, 1961 ; Coal Mines (Conservation and Safety) Act, 1962 ; Coal Mines Provident Fund and Bonus Schemes Act, 1948 ; Contract Labour (Regulation and Abolition) Act, 1970 ; Employment Exchange (Compulsory Notification of Vacancies) Act, 1959; Employers' Liability Act, 1938; Employees' Provident Fund Act, 1952; Employees' State Insurance Act, 1948; Factories Act, 1948; Fatal Accidents Act, 1855; The Industrial Disputes Act, 1947 ; The Industrial Employment (Standing Orders) Act, 1946 ; Mines Act, 1952; Minimum Wages Act, 1948; Motor Transport Workers Act, 1961; Payment of Bonus Act, 1965 ; The Payment of Gratuity Act, 1972 ; The Payment of Wages Act, 1936 ; Trade Unions Act, 1926 ; Working Journalists (Conditions of Service and Miscellaneous Provi-

sions) Act, 1955; and The Workmen's Compensation Act, 1923. The enunciations under the several listed heads are clear. The elucidation of the ratio of the decided cases is intelligible and satisfactory. The book will be useful to lawyers, students of labour law and others interested in industrial and labour law.

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CRISIS IN ADMINISTRATION by *S.K. Ghosh.* (Publishers, Eastern Law House Private Ltd., Calcutta), 1974. Price Rs. 25.

The Rourkela riots of 1964—a repercussion of the Khulna disturbances in East Pakistan a little bit earlier—provided the motive force for writing the present book. It is a gruesome picture of orgies of communal frenzy and violence, looting, arson and panic fanned by rumours sedulously set afloat and exploited by politicians, of inertia and ineptitude and in some instances of even possible connivance of the police and other factors. The author who had held the highest posts in police service and served with distinction, gives an authoritative and forceful account of the happenings during a fairly long period of time exposing the several weaknesses of the administrative machinery in the area leading to total lawlessness and insecurity. His purpose in writing is to show that if the weaknesses are not properly tackled and the root causes of the tension eliminated, it may result in a crisis in administration in the future. In the words of the author the author has " not only surveyed the deep-seated malady in our administrative machinery but at the same time suggested therapeutic measures. "

Many of the author's observations : " If democracy means the subordination of law and order to political ends, then God help us". "To have a politically minded police is to head for a national disaster "; " Ministers have a sixth sense as to which side their bread is buttered " will find wide acceptance. The author's style is vivid and forthright. His suggestions are comprehensive and marked by insight and deserve serious consideration.

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OUR CONSTITUTION DEFACED AND DEFILED by *N.A. Palkhivala* (Publishers : Macmillan Company of India Ltd., New Delhi-110006). 1974. Price Rs. 25.

Recent events like the far-reaching amendments to the Constitution like the 24th and 25th amendments with serious repercussions on the rights guaranteed by the Constitution to the citizens, the 26th amendment nullifying what had been all along regarded as solemn pledges made to the quondam rulers of the former Princely States, the attempts made " to curb the powers of the judiciary and have one made to measure ", coupled with high inflation and economic disequilibrium have caused many thinking men to wonder whether the spirit of liberty can survive or whether the country is being taken towards a dictatorship. The author is among those who feel that at the present time " the nation is standing on the escalator of anarchy and authoritarianism". The main objective of the Constitution-makers was to bring about a socio-economic revolution. Remaking of the material conditions was therefore necessary and imperative. At the same time the liberty of the human spirit against the encroachments of the State had to be safeguarded. The provisions in Part IV of the Constitution were designed to achieve the former and the fundamental rights enacted in Part III were to ensure the latter. Parts III and IV constituted an integrated scheme forming a self-contained code. How the code was to operate in practice and what should be the relative importance of the two Parts in the governance of the country have evoked conflicting reactions.

None can disagree with the author's observations : " Our constitution is primarily shaped and moulded for the common man" (p. 29); "A democracy in which the spirit of liberty does not reside is a morgue " (p. 2) ; " The conviction underlying the Constitution is that an honest and competent government should be able to achieve the directory ends by the permissible ends" (p. 33). But statements like—" Our basic freedoms have been drastically eroded. Article 31-C has dealt a near fatal blow to liberty under the law " (p. vi); " when by Article 31-C the various fundamental rights un-

der Articles 14, 19 and 31 were abrogated we not only broke our pledge to our own people but also violated the Universal Declaration of Human Rights" (p.49); "Art. 31-C is a monstrous outrage on the Constitution" (p. 58); "Freedom is not more than one election away from extinction" (p.64)—may not command total acceptance.

The book contains a masterly presentation of the views of the author. Whether one agrees with all his conclusions or not there is no denying the fact that all is not well " with the State of Denmark " and there is much for those in authority to ponder over. The author's exposition is scholarly, brilliantly analytical, packed with information, forthright in expression and pervaded by literary flavour. This is a book which can be read with profit by every one.

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SUCCESSION IN INTERNATIONAL LAW by *T.T. Poulose*. (Publishers : Orient Longman Ltd., 1/24 Asaf Ali Road, New Delhi-110001). 1974. Price Rs. 60 .

Succession signifies the factual situation arising when one State is substituted for another over a given territory. Succession may be universal as when one State is completely absorbed by another or partial as where a new State results from succession from a parent State. One of the questions arising on succession is how far the successor State succeeds to the rights and obligations of the predecessor State. State succession is at the present time of importance to the world community as never before due to the emergence of new nations in Africa and Asia posing the question whether the framework of international law based on a far different type of socio-political context should not be suitably revised taking into account the thought-patterns and experiences of the new nations, so as to make it uniformly applicable to all the nations, old as well as new. Taking the case of India itself, its separation from Britain gave rise to one pattern of succession and its vivisection to another producing a somewhat peculiar situation in which while remaining an international person from even before separation from Britain it continued to be a member of the Commonwealth and again whether its earlier personality continued intact even after partition of India into India and Pakistan or whether both India and Pakistan became successor States.

The book under notice discusses the subject of State succession in 11 chapters. Ch. 1 furnishes an Introduction to the study and Ch. II explains the concept of Succession in International Law. Chs. III and IV are devoted to the India-Pakistan succession question. Chs. V to X deal with the effect of State Succession on Treaties, Nationality, Private Rights, Public Debts, Contracts, Public Property, Law etc. Ch. XI sets out the author's conclusions. The author points out *inter alia* that while the west-oriented traditional principles of international law should take due note of the outlook and attitudes of the new Afro-Asian nations, at the same time, the national aspirations of the latter should be rationally based so as to promote the interests of the international community (p. 199). With reference to India and Pakistan, it is, in the author's view, a case of 'plural succession' (p. 30). The author's treatment of State Succession is both original and refreshing. He has traced all recent developments and applied his mind to the emerging problems. The emergence of Bangla Desh as an independent nation presumably materialised only after the book went to the press and so has escaped notice. The book is a scholarly study of the subject and is a significant contribution to the literature relating to it.

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CONDUCT OF ADVOCATES AND LEGAL PROFESSION : Short History by *N. Dutt Majumdar*, First Edition, November, 1974. (Publishers : Eastern Law House Private Ltd., Calcutta). Price Rs. 18 : £2 : $5.

The book is an exposition of Professional Ethics taking note of leading judicial decisions bearing on the subject. The Canon of Ethics of the American Bar Association, Conduct, and Etiquette at the Bar of England and Wales are also set out. It may be suggested that decisions like *Venkanna* v. *High Court of Mysore*, A.I.R. 1973 Mys. 127; holding that where

an advocate is a litigant in person he does not 'practise' his profession and therefore, he cannot be permitted to argue with his advocate's robes or from the advocate's table; and *Sitabai* v. *Vidhyawati*, A.I.R. 1972 M.P. 198, laying down that the mere fact that counsel was busy in some other Court is not a good and sufficient reason for his default of appearance in Court when his case was called and such absence is not only unfair to his client whose interest he had undertaken to protect but is also discourtesy to the Court deserve inclusion.

The book under notice will meet the day to day requirements of the Bar in their professional work and constitutes a dependable statement of the relevant principles of professional conduct and ethics.

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OUTLINES OF HINDU LAW by. *P.V. Dhareshwar*, First Edition, 1975 (Published at 246, Ranade Road, Tilakwadi, Belgaum). Price Rs. 10.

The book is intended primarily for students. Greater lucidity could have been achieved if the old law had been kept throughout distinct from the statute law on topics like marriage and adoption. On page 12 the father's right to give a child in adoption is stated to be *absolute*. This overlooks that though under the earlier law it was so, under section 9 of the Hindu Adoptions and Maintenance Act a father cannot ordinarily give a child in adoption without the consent of the mother. It is now open to a mother to veto the giving. The statement on page 178 that the provisions of section 8 of the Hindu Succession Act are not " in prospective in operative " tends to puzzle. On the whole, however, the book will be helpful to students in particular as giving in a simple and condensed form the principles of Hindu Law.

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LAW OF MAINTENANCE OF WIVES, CHILDREN AND PARENTS IN INDIA by *A.B. Gandhi*, First Edition, January, 1975. (Published by Milan Law Publishers, Bombay, 400008.) Price Rs. 22.

The law relating to maintenance in India is to be found in different enactments, and in the case of Muslims in Mahomedan Law. The Hindu Adoptions and and Maintenance Act, 1956; the Hindu Marriage Act, 1955 ; the Special Marriage Act, 1954 ; the Indian Divorce Act, 1856 ; and the Parsi Marriage and Divorce Act, 1936, contain provisions relating to maintenance. Apart from these statutes and applicable to all communities, the Criminal Procedure Code, also provides for the award of maintenance. While section 488 of the former Criminal Procedure Code, did not contain any provision regarding the maintenance of parents the Code of 1973 has made provision in that behalf. The provisions governing maintenance of wives, children and parents in the new Criminal Procedure Code, are sections 125 to 127. The instant book is divided into seven parts. Part I is devoted to the Criminal Procedure Code, provisions ; Part II to maintenance under the Hindu Adoptions and Maintenance Act ; Part III to maintenance under the Hindu Marriage Act ; Part IV to maintenance under Mahomedan Law ; Part V to maintenance under the Special Marriage Act provisions; Part VI to the position under the Indian Divorce Act ; and Part VII to that under the Parsi Marriage and Divorce Act. To have brought all these provisions together is a feature facilitating comparative study and serving as a ready referencer on the matter. The latest decisions have been considered and the relevant points extracted. The book will be welcome to busy practitioners and law students.

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## ANOMALIES IN THE MOTOR VEHICLES ACT (CENTRAL ACT IV OF 1939) AS AMENDED BY ACT LVI OF 1969.

*By*

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There are drastic changes in many of the provisions of the Motor Vehicles Act, (Central Act IV of 1939) by the Central Amendment Act LVI of 1969.

Section 110 has also been amended making provisions to file claim petitions before the Claims Tribunal for property damages also. Originally section 110 provided for filing petitions before the Claims Tribunal only in respect of compensation for death or bodily injury arising out of motor vehicle accidents. Now under the amended section 110, 3rd party can make a claim exclusively for the damages to his property or for the injury or death and also for the damages to the property as the case may be.

A similar amendment has also been made under section 95 creating a minimum statutory liability of Rs. 2,000 in respect of the damages to any property of a 3rd party, to be paid by the Insurance Company in addition to the other liabilities enumerated under clauses (*a*) to (*c*) of sub-clause (2) of section 95 of the Act. Of course this minimum liability of Rs. 2,000 is subject to any special liability as envisaged under sub-section (5) of the same section.

Now after the amendments, a 3rd party who sustained property damages to the tune of any amount may prefer a claim before the Motor Accident Claims Tribunal either exclusively or along with the compensation for death or bodily injuries as the case may be. Under the proviso an option has been given to the claimant to take up the case of property damages before the civil Court in cases where the claim for damages to the property exceeds Rs. 2,000. So it is very clear, that when the value of the claim regarding the property damages is less than Rs. 2,000, the claim has necessarily to be filed before the Claims Tribunal only as the civil Court has no jurisdiction by virtue of section 110-F.

Difficulties arise in cases where the value of the damages to the property of the 3rd party is more than Rs. 2,000. Here, unfortunately the proviso to section 110 is not happily worded. The amendment, instead of making the procedure simple, complicates the situation altogether. The proviso reads as follows:

"*Provided that where such claim includes a claim for compensation in respect of damage to property exceeding rupees two thousand, the claimant may, at his option, refer the claim to a civil Court for adjudication, and where a reference is so made the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claim*"

The use of the word '*refer*' complicates the situation. Does it mean that the claim petition should originally be filed before the Claims Tribunal and on the motion by the claimant to the Tribunal to be referred by the Tribunal to the civil Court?

Can the claimant straightaway take up the case to the civil Court where the value of the damages exceeds Rs. 2,000? If that is so the use of the word '*refer*' is meaningless. Because a matter can be referred only by a person who has an authority either judicial or quasi-judicial or executive. A claimant cannot refer his own claim. If the Legislature thought that the claimant where he thinks that the matter is of a serious nature can go to the civil Court for a regular trial instead of facing a summary proceeding before the Tribunal, they could have used the word '*prefer*' which simplifies the matter, in the

sense that the claimant can exercise his option under the proviso and put forward his claim or prefer his claim before the civil Court.

If it can be interpreted, because of the use of the word '*refer*' that the Claim should be made only before the claims Tribunal in the first intance and get the reference from the Tribunal to the civil Court, we have to face the following difficulties :

1. Under the Motor Vehicles Act the claim has to be filed in the prescribed form provided in the Act which has nothing to do with the pleadings as contemplated for a plaint in the Civil Procedure Code. Therefore the question arises when the reference is so made whether the petition will be treated as a plaint, though it is not in substance in confirmity with the plaint.

2. The question of Court-fee :

What is the Court-fee to be paid whether under the Court Fees Act or under the Motor Vehicles Act.?

Another important anomaly in making a claim before the Tribunal and the civil Court is the question of limitation. If the interpretation is to the effect that the claimant could straightaway take up the matter before the civil Court the period of limitation is three years.

Whereas the same claim can be made before the Tribunal only within six months. If a suit is straightaway filed before the civil Court after the period of six months time, could it be resisted on the ground that the claim is barred by limitation as the option can be exercised only under the Motor Vehicles Act and the time limit prescribed under that act is only six months? But the proviso reads that where the reference is so made to a civil Court the Claims Tribunal shall have no jurisdiction over the matter in dispute.

Another unhappy feature of the proviso is that the first line of the proviso reads:

"*Provided that where such claim includes a claim for compensation in respect of damages to property......*"

This sentence is likely to confuse the claimant, that the claim should be for compensation for death or bodily injury of a person and also damages to property of a 3rd party. The words '*such claim includes*' appear to be mileading. Instead of this if the words used are as follows :

"Provided in case of claim in respect of the damages to the property of a 3rd party exceeding Rs. 2,000," it will be alright. Otherwise there is confusion and it becomes more confounded that the proviso is applicable only in case where the compensation is for both, and in that case whether the claim has to be split up and what will happen to the compensation for the death or bodily injury.

Again there is no meaning altogether for the proviso. Because, so far as the insurance company is concerned it is liable only upto the limitation of statutory liability whether the claim is made before the Tribunal or before the civil Court except in case of special conditions contemplated under sub-section (5) of section 95 of the Motor Vehicles Act. In a case where the insurance company makes itself liable for more amount than the statutory limit by inserting the special condition in the policy, an award can be passed by the Tribunal and also a decree can be passed by the civil Court upto such an amount, as per the contract of policy by virtue of the provision under sub-section (5) of section 95. Therefore the claimant is not given any special treatment or advantage by making a claim before the civil Court except that he will have a regular and elaborate trial under the provisions of the Civil Procedure Code for which he will have to pay a huge amount by way of Court-fee under the Court-fees Act. In these cir-

cumstances it really becomes meaningless, why there should be a proviso under section 110 of the Motor Vehicles Act differentiating the claim in respect of damages to the property of a 3rd party exceeding Rs. 2,000 and a claim for less than Rs. 2,000.

Then again, if a suit is straightaway filed, can it not be defended on the ground that the civil Court has no jurisdiction as the matter can be adjudicated by a Motor Accident Claims Tribunal and consequently the jurisdiction of the civil Court is barred by section 110-F of the Motor Vehicles Act and that even if the claimant wants to exercise his option he can do so only by preferring a claim before the Tribunal in the first instance and take a reference from the Tribunal?

All these anomalies have to be given very serious thought by the Legislature and necessary amendments have to be made in the Act at the earliest. In these days of heavy traffic and increasing number of vehicles on the road, we come across many accidents daily.

## BOOK REVIEW

K. S. SHAVAKSHA'S TRADE AND MERCHANDISE MARKS ACT, 1958, Second Edition by *G. Shavaksha*, 1974. (Publishers : N.M. Tripathi Private Limited, Bombay). Price Rs. 40.

Mr. Shavaksha's book has been regarded always as a standard work on the subject of Trade Marks. Though drawing light from English decisions, his comments on the sections of the Trade and Merchandise Marks Act are not a mere reflection of the English law but have taken adequate notice of the decisions in India and the Indian practice. It may be suggested that decisions like *Parle Products (Pvt.) Ltd* v. *J.P. & Co., Mysore*, A.I.R. 1972 S.C. 1359, laying down that in an action for infringement of a trade mark the plaintiff must make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and defendant's marks is so close either visually, phonetically or otherwise and the Court concludes that there is an imitation, no further evidence is required to establish that the plaintiff's right is violated, and *Hajakawa Electrical Co.* v. *Associated Electronics and Electrical Industries, Bangalore*, (1974) 1 M.L.J. 392, holding that section 11 (*a*) can be invoked to prevent registration of a trade mark only if the goods of the objector had a reputation in this country, might have found inclusion. The survey in Appendix V of the law governing the protection of confidential industrial information or know-how is a new feature of the present edition which will be highly appreciated. The present edition sustains the high quality of the First Edition and is a welcome publication.

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THE PAYMENT OF BONUS ACT, 1965 by *D. S. Chopra* (Publishers : N.M. Tripathi Private Ltd., Bombay). 1973. Price Rs. 38.

Bonus is an extra payment over and above the wages and not a substitute therefor. It is neither a gratuitous payment nor deferred wages. It is in some measure a right of the workmen to share in the profits of the industry. Social justice demands that a claim to bonus should not be refused except for very good reasons. Computation of bonus has now to be made according to the provisions of the Bonus Act, 1965 which was enacted to fix the minimum and maximum rates of bonus payable to the employees within the purview of the Act. The Bonus Act does not in any way exclude the application of the Industrial Disputes Act of 1947.

The instant book furnishes a sectionwise commentary. Decided cases have also been taken into account. It is gratifying that the provisions of the Industrial Disputes Act, Factories Act etc., have been mentioned wherever relevant and explained. The recommendations of the Bonus Committee and the Bonus Review Committee, 1972 have been adverted to in the comments. It will be generally agreed that, as stated by the author, the Bonus Act has not put an end to confrontations between employers and employees over the payment of bonus every year. Like Oliver Twist, the workmen are asking for more. The suggestion by the author that the Payment of Bonus Act should be made into a self-contained code with an internal machinery to deal with disputes under the Act deserves consideration. The book is bound to be of much utility to lawyers and those concerned with or affected by the working of the provisions of the Act.

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LAW RELATING TO PROVIDENT FUNDS by *D. S. Chopra*. (Publishers : N. M. Tripathi Private Ltd., Bombay). 1974. Price Rs. 45.

Provident fund constitutes a retirement benefit. It serves as a security provision for the furture. It differs from pension in that the employee himself contributes to its accumulation over his years of service. Again provident fund amount is a lump sum payment to the employee and is not periodical like pension.

There are a number of statutes, rules, schemes etc., relating to provident fund for employees in different industries. The present work brings together the Employees' Provident Funds and Pensions Act, 1952; The Employees' Provident Fund Scheme, 1952 ; Notifications issued under the Act and the Scheme ; Employees' Family Pensions Scheme,

1971; Seamen's Provident Funds Act, 1925; General Provident Fund (Central Services) Rules, 1960; Coal Mines Provident Fund, Family Pension and Bonus Scheme Act, 1948; Coal Mines Family Pensions Scheme, 1971; Public Provident Funds Act, 1968; and Contributory Provident Fund Rules (India), 1962. The statutory provisions and the rules are up to date. The author provides comments taking into account decided cases. The details relating to the working of the provident fund scheme and the family pensions scheme are set out. The instant book covers the subject exhaustively and affords useful guidance. It will be helpful to lawyers and students as well.

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MATRIMONIAL REMEDIES UNDER HINDU LAW by *Raj Kumari Agrawala*. (Publishers: N.M. Tripathi Private Ltd., Bombay) 1974. Price Rs. 40.

Traditional Hindu Law had its moorings in Hindu religious principles. The Sastras regarded marriage as a samskara and the tie was considered indissoluble, Monogamy was held out as an ideal but polygamy was not prohibited. In such atmosphere there was scanty scope for matrimonial reliefs to develop. The Anglo-Indian Courts had, on equitable considerations, awarded relief by way of restitution of conjugal rights or by decreeing maintenance and separate residence to a wife in certain circumstances. The Indian Constitution ushered in a secular State and provided for the abolition of discrimination on grounds *inter alia* of sex or caste rendering any law violative of this provision illegal. The Hindu Marriage Act of 1955 was born of reformist zeal for social justice. The Act made marriage monogamous and provided for four primary matrimonial reliefs, namely, restitution of conjugal rights, judicial separation, annulment and declaration of nullity, and divorce. Incidentally the Act provided for maintenance *pendente lite* as well as permanent alimony and maintenance. The Act has been in operation now for about two decades. The impact of the Act on the Hindu family system, the degree to which Hindu social conscience has been roused to react favourably to the provisions of the Act, the popular response to the grant of matrimonial reliefs, the effectiveness and efficacy of such reliefs, etc., are matters requiring investigation and evaluation periodically.

The present book is an adaptation of the author's doctoral dissertation accepted for the award of the Ph. D. Degree. The book is divided into 3 parts. Part I is devoted to the matrimonial reliefs available under the old law and the present law. Part II examines critically the grounds for claiming the reliefs, like desertion, cruelty, adultery, impotency, etc. Part III discusses Procedure and other issues. The Appendices, of which there are five, provide the texts of the Hindu Marriage Act, 1955; section 488 of the Criminal Procedure Code, 1898; the Hindu Adoptions and Maintenance Act, 1956; the Special Marriage Act, 1954; and the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. It may be mentioned that section 488, Criminal Procedure Code, 1898 has been replaced by sections 125 to 127 of the Criminal Procedure Code, 1973. Case-law has been fully scanned and there is hardly any case of importance that has escaped consideration.

The author has not hesitated to express her views or to make suggestions. On page 164, pointing out that cruelty has been introduced as a ground of divorce through the backdoor (section 13-A), she observes: "It is difficult to appreciate why the Legislature preferred to exclude cruelty from directly being a ground of divorce. It might be well for our law-makers to reconsider and make up their minds finally. If they wish Hindus to obtain divorce on the basis of cruelty, let them introduce it as a ground in section 13 as has been done by the State of Uttar Pradesh; If they do not wish so, they ought to stop the backdoor entry also. In the present submission cruelty is too abstract to be included directly or indirectly as a ground of divorce". Again at page 181, it is suggested that the Court may be a little less strict about the technicalities of proof where it feels that the petitioner sincerely believes in his or her allegation of adultery leaving no hope for reconsideration or reconciliation, but

in the case of unchastity as a bar for the claim of maintenance of the wife, the Courts should apply a very strict standard of proof because withholding the right of maintenance means literally throwing her on the road without means of support. The book reveals a close study of the subject by the author marked by brilliant analysis and lucid presentation. The book can be read with pleasure and profit.

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OUTLINES OF LABOUR LAW by *D. S. Chopra*, (Publishers : N.M. Tripathi Private Ltd., Bombay) 1974. Price Rs.24.

If industries are to thrive and production is to increase capital and labour must sail in harmony. Neither of them should rock the boat. Confrontation between them would prejudicially affect the country's economy. The Legislature has from time to time enacted laws to eliminate friction and discontent and ensure to labour a fair deal. Three such enactments are the Industrial Disputes Act, the Payment of Wages Act and the Workmen's Compensation Act. The instant book is not a sectionwise commentary on the provisions of these Acts but has divided the statutes into various chapters and the statutory provisions have been explained under different headings or titles in the light of decided cases. The book contains a clear outline of the law and will be helpful to students in particular.

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OUTLINES OF CRIMINAL LAW by *D.S. Chopra* (Publishers : N.M. Tripathi Private Ltd., Bombay) 1974. Price Rs.23.

The basic concepts and functions of criminal law, the nature, character and quality of offences, the growth of modern administrative or public welfare offences, etc., are subjects of intensive study at the present time. The Indian Penal Code though a well-drafted Code which has withstood the passage of time well reflects and embodies the thought-processes and thinking of early nineteenth century and requires modernisation. A revised Penal Code is on the legislative anvil. The book under notice is divided into three parts, the first dealing with criminal jurisprudence, the second with the Penal Code provisions and the third suggesting solutions to some problems of criminal law. The concept of crime, the conventional theories of punishment, the different kinds of punishment, liability, etc., are explained in Part I. The comments on the Penal Code provisions are furnished in Part II. The book is essentially one for students learning the rudiments of criminal law.

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LAW OF CONTEMPT IN INDIA by *Bal Ray Varma*. (Publsihers : N.M. Tripathi Private Ltd., Bombay) 1974. Price Rs.30.

It is wholesome principle that those charged with administering justice should not be interfered with. In a classic statement Lord Atkin said in *Ambard's case*, 1938 A.C. 323 : "Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men". Broadly speaking two principles have crystallised. No comment on pending proceedings should be made. Nor can the Judge be scandalised. To uphold the majesty of the law, and the dignity of Courts and to ensure impartial administration of justice, Courts of law take contempt proceedings. A peculiar feature of the power to punish for contempt is that it is a jurisdiction in exercising which, often, the role of the prosecutor and the adjudicator is combined in one person. The present book is a commentary on the Contempt of Courts Act, 1971. The provisions of the Act represent an attempt to balance the two important but occasionally conflicting principles, namely, fearless justice and freedom of expression. The Act also ensures that the summary procedure in contempt matters is replaced by an ampler procedure in consonance with principles of natural justice. In the introduction, the author traces the development of the law of contempt and examines the validity of the Act. He has analysed the provisions of the Act and stated in a lucid manner the principles which should guide the Bench and the Bar in matters of contempt, for vindicating justice. The book is a useful publication.

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INTERPRETATION OF STATUTES THROUGH CASES by *M.V. Dhareshwar*. (Published by P.V. Dhareshwar at 246, Ranade Road, Tilakwadi, Belgaum). 1974. Price Rs. 6.

This book collects the principles of interpretation applied by the Courts in the leading decisions. For this purpose it adopts a questions and answers form. The subject is covered in all by 29 questions (actually there are 31) spread over 12 chapters. The 13th chapter contains some legal maxims. An index of cases is also provided. English decisions also have been drawn upon in relation to the principles of interpretation. The conclusions are stated in simple language. The book will be of assistance to students in particular.

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Also received: REVIVAL OF SWADESHI SPIRIT—AN ANSWER TO SMUGGLING by *S.R. Vakil*. (Publishers: Forum of Free Enterprise, Bombay-1)

WHY SCARCITIES by *D.R. Pendse, C.V. Mariwala, B.D. Somani and M.R. Meher*. (Publishers: Forum of Free Enterprise, Bombay-1); and

CONSUMERS OF A STATE MONOPOLY: L.I.C. POLICY HOLDERS by *Prof. L.G.Bapat* (Publishers: Forum of Free Enterprise, Bombay-1).

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COMMENTARIES ON THE PAYMENT OF GRATUITY ACT, 1972 by *K. D. Srivatsava*. (Publishers: Eastern Book Company, Lucknow). 1975 Edition. Price Rs. 40.

The concept of social security comprehends *inter alia* provision against old age or death of bread-winners. Such provision may take the form of pension, provident fund benefit or gratuity. Gratuity is in essence a retirement benefit for long service satisfactorily rendered. Literally the term signifies something given voluntarily and beyond obligation. Gratuity schemes differed from industry to industry and were often marked by niggardliness. The question of gratuity was often giving rise to industrial disputes. Central legislation was therefore undertaken and Parliament enacted the Payment of Gratuity Act, 1972. The provisions of the Act and the Rules framed under the Act override other enactments.

The instant book provides comments on the several provisions of the Act. Decisions bearing on the several aspects of gratuity law have been taken into consideration and parallel case law from related enactments have also been used to elucidate the principles. In spite of copious reference to decisions, it looks as if the decision of the Supreme Court in *Tournamulla Estate* v. *Their Workmen*, (1973) 43 F.J.R. 402, has been missed. In that decision the Supreme Court points out that misconduct may be of three kinds: (*i*) technical, (*ii*) causing damage to employer's property, and (*iii*) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment which though not directly causing damage is conducive to grave indiscipline; that the first type should involve no forfeiture, that the second might involve forfeiture of the amount equal to the loss directly suffered by the employer in consequence of the misconduct, and the third will entail forfeiture of the gratuity amount; that if the workman is guilty of serious misconduct of the third category his gratuity can be *forfeited in entirety* and that such a rule is incorporated in section 4 (6) of the Act.

Rules framed under the Act by the Central and State Governments are furnished. Thus the Payment of Gratuity (Central) Rules, 1972; the Payment of Gratuity (Maharashtra) Rules, 1972; the Payment of Gratuity (Madhya Pradesh) Rules, 1973; the Payment of Gratuity (Kerala) Rules, 1973; the Payment of Gratuity (Tamil Nadu) Rules, 1973; the Payment of Gratuity (Andhra Pradesh) Rules, 1972 and the Payment of Gratuity (Delhi) Rules, 1973 have been included. The notes provided under the sections are analytical and exhaustive. The presentation is lucid. Matters like the con-

cept of social security and its evolution, its different aspects, the concept of social justice, its implications and impact on freedom of contract have been dealt with. The instant book is a valuable and helpful contribution which will afford useful assistance to the members of the Bar and all those concerned with or affected by the administration of labour laws and industrial welfare.

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**ARTICLE 31-A (1) 2nd PROVISO OF THE CONSTITUTION — A NOTE ON A.I.R. 1975 S.C. 646.**

*By*

C. S. VENKATASUBRAMANIAN, *Advocate, Coimbatore.*

The scope of the Second Proviso to Article 31-A (1) of the Constitution came up for consideration before the Supreme Court in the decision reported as *Sri Navaneetheswaraswami Devasthanam* v. *State of Madras*[1]. The question arose in this way :—

The appellant Devasthanam was the proprietor of a whole inam village under Inam tenure which was abolished by the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1963 and was in personal cultivation of the lands in question and claimed compensation at market value for such lands. The Act provided for compensation at a fixed multiple of the tasdik allowance which was not equivalent to the market value. The temple claimed unsuccessfully before the High Court of Madras that it was entitled to such compensation for all the lands in accordance with the Second Proviso to Article 31-A (1) and filed an appeal to the Supreme Court. It was contended by the appellant before the Supreme Court that inasmuch as the lands in question were in the personal cultivation of the temple and it was not governed by the ceiling law in the State the temple was entitled to the benefits of Article 31-A (1) Second Proviso. The Supreme Court rejected this argument on the short ground that it was only if the ceiling law was applicable to the person concerned the Second Proviso would be attracted and that otherwise even if the person was in personal cultivation of the lands the Second Proviso can have no application.

It has to be noted that the Second Proviso to Article 31-A (1) came as part of the package programme under the 17th Amendment to the Constitution by which the scope of Article 31-A was extended and several other amendments were effected. Before the 17th Amendment came into force the Supreme Court had held in a catena of decisions that compensation under Article 31 (2) as it then existed was to be a *quid pro quo* for the property compulsorily acquired. When by the 17th Amendment the definition of the word "estate" in Article 31-A was modified to apply to lands held under ryotwari settlement, Parliament meant that laws imposing a ceiling on land holdings held under the ryotwari system were not to be assailed as infringing the provisions of the Articles 14, 19 or 31. By the same amendment several land ceiling laws of different States enacted from 1951 onwards were added to the list of Acts included in the IX Schedule and given the blanket protection of Article 31-B. It is in this context that the Second Proviso to Article 31-A (1) was enacted. It provides that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation it shall not be lawful for the State to acquire any portion of such *land as is within the ceiling limit applicable to him under any law for the time being in force*, unless the law relating to the acquisition provides for payment of compensation at a rate which shall not be less than the market

1. The Bench consisted of K.K. Mathew, V. R. Krishna Iyer, A. C. Gupta, JJ. It is not clear if the Bench thought that no substantial question as to the interpretation of the Second Proviso to Article 31-A (1) was involved in the case or whether Article 145 (3) of the Constitution was lost sight of which provides that the minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution shall be *five*.

value thereof. Grammatically construed this Proviso contains only two conditions for its applicability. They are : (1) The law in question must make a provision for acquisition by the State ; (2) The land in question must be held by the person under his personal cultivation. It does not postulate that the land must be within any particular ceiling limit. It is no doubt true that a ceiling limit applicable to the person is spoken of. But the Proviso is not so worded as can reasonably lead to the further condition that there should be a ceiling law applicable to the person concerned before the Proviso can be called in aid. All that Article 31-A (1) and its Second Proviso taken together say is this :—The State is enabled to enact a land ceiling law. When one is enacted and applied to a person his right to compensation for land beyond that ceiling may be fixed by the ceiling law but the person shall be entitled to market value compensation for all land held by him which is not hit by such ceiling. In other words the Second Proviso postulates that so long as the land in question is not beyond the ceiling limit the person concerned shall be entitled to compensation at market value. That is to say the State must first enact a ceiling law and apply it to a person before his right to compensation at market value can be curtailed. So long as a ceiling law is not enacted or is not applied to a person the curtailment of the right to compensation at market value does not arise at all. This is also in conformity with the rules of interpretation of statutes relating to exceptions and provisos. Now to hold that there should be a ceiling law applicable to the person concerned before the Second Proviso can come into operation is to go beyond the intention of Parliament under the Second Proviso to Article 31-A (1) and to impose a condition which is not there. The effect of such a reading of a condition into the Proviso is to place a person to whom no ceiling law is applicable in a position worse than a person to whom there is a ceiling law applicable for the latter will be entitled to market value compensation at least in respect of part of his holdings. The whole question is this : does Article 31-A (1) Second Proviso contemplate the existence of a *ceiling law* or does it merely provide that the land (for which market value compensation is claimed) should be below the *ceiling limit* if there is any ? It will be interesting in this context to note that the IX Schedule which sets out the enactments which enjoy the blanket protection of Article 31-B contains an *Explanation* which says that any acquisition made under the Rajasthan Tenancy Act III of 1958 in contravention of the Second Proviso to Article 31-A (1) shall be void to the extent of such contravention. The existence of such an *Explanation* in the IX Schedule itself shows that the Second Proviso to Article 31-A (1) was considered sacrosanct by Parliament even while whittling down the scope of the fundamental right under Article 31 (2).

Another argument advanced before the Supreme Court on behalf of the appellant was that since the law relating to ceiling in the State of Madras did not fix any limit to the ownership of the land by the Devasthanam the extent of the land owned by it itself provided the ceiling on its ownership and therefore the provisions of the Second Proviso would apply. The Supreme Court did not accept this argument and held that the Proviso was clear that unless the law fixing the ceiling limit was applicable to the person concerned he would not be entitled to the benefit of the Proviso. In other words it was argued that if a ceiling law did not apply to the person concerned there was no ceiling applicable to him and that the sky was the limit and all lands would come within the right to compensation at market

value under the Second Proviso. Although this was only another aspect of the same argument it looks as if this was entitled to greater consideration, especially in the context of the position noticed earlier that while the Second Proviso may contemplate *a ceiling* it does not necessarily contemplate *a ceiling law*. An interesting case in a somewhat similar situation is reported in *Vidyacharan Shukla* v. *Khubchand Baghel*[2]. The question there was whether for the purpose of the applicability of section 29 (2) of the Limitation Act, 1908, it could be said whether, when the First Schedule thereof made no provision for a particular kind of suit for which a special law had made a provision, the Limitation Act could be said to have prescribed a period of limitation *different* from that under the special law. It was held by the majority consisting of Sinha, C.J., and Rajagopala Ayyangar and Subba Rao, JJ. that even when the Limitation Act prescribes no period it must be deemed to prescribe a *nil* period and that the *nil* period was *different* from the other periods prescribed by the special law. Applying the same analogy it could well be said that when the ceiling law does not apply to a particular person then "*the ceiling limit applicable to him under the law for the time being in force*" for that person may be said to be *nil* and therefore the sky is the limit.

It may be remembered that the Second Proviso above referred to which is in the nature of an exception to Article 31-A which is itself an exception to Article 31 came in at a time when the right to compensation was greatly restricted and Parliament did not want to restrict it in the cases falling under the Proviso. In the circumstances the Proviso which is in Part III can itself be deemed to confer a fundamental right and is indeed the last vestige of a fundamental right to property. It is therefore submitted that the view taken in the above decision of the Supreme Court requires further consideration.

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2. A.I.R. 1964 S.C. 1099.

## SECTION 19 OF TAMIL NADU ACT XXXVIII OF 1972—AMBIGUOUS AND ANOMALOUS.

*By*

T. S. SUBRAMANIA IYER, *Advocate, Tiruchy.*

Section 19 in the Tamil Nadu Act XXXVIII of 1972, the Act to relieve indebted debtors, other than agriculturists, is a mere reproduction of section 23 (*c*) of the Madras Act IV of 1938. When a relief of scaling down of debt is available under section 7 and 15 of the Act XXXVIII of 1972, and the decree for only such scaled down amount, can be enforced and executed, the interpretation sought to be given to the passage under section 19 of the Act by several Courts, that only sales had at the time of the publication of the Act, and not thereafter, could be set aside, is only whittling own the ambit and purport of the intention of the Act, to award relief to the debtors, and deny the right of relief to thousands of debtors who would be eligible to the reduction of the decree amount and the amendment of the decree accordingly. To put it in another way, if sale is had only at the time of the publication of the Act, the relief to set aside the sale would be available to the judgmebt-debtor (as per the ruling given in several Courts), and that otherwise the sale would be confirmed, sale certificate issued, delivery ordered and so on.

This interpretation would make section 15 of the above Act (corresponding to section 19 of the Act IV of 1938) inconsistent, incompatible with section 19 of the Act XXXVIII of 1972 and impracticable in working. What is sought to be given by one hand would be taken away by the other. The copious discussion advanced in the article at page 1 of the Journal section of (1975) 2 M.L.J. would apply *mutatis mutandis*, to section 19 of Act XXXVIII of 1972. Section 19 in this view would be unnecessary and cannot fit in with the other sections of the Act. The matter requires a fuller study and amendment. What is to happen to a debtor whose decree debt for Rs. 5,000 is ordered to be scaled down to Rs. 3,000 or even less to Rs. 2,000 or so, and his property is sold in execution to an auction-purchaser ("decree-holder or third party") for the original decree amount of Rs. 5,000 and sale confirmed, delivery etc. ordered ? The order of scaling down in such a case is ineffectual, nugatory and of no force. This has to be considered and properly remedied.

## PROBLEMS OF DIVIDEND PAYMENT

*By*

C.V. NARAHARI RAO, M.A.B.L., *Secretary, Lakshmi Machine Works Ltd., Coimbatore-20.*

According to the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, with effect from 1st March, 1975, interest at 8 per cent per annum is payable for the two instalments of "deferred dividends" to be paid on 5th July, 1976 and 5th July, 1977. A company is entitled to date and/or post the dividend warrant (D.W.) within 42 days from the date of declaration at the annual general meeting of the company of the dividend, including the " immediate dividend " and the two instalments of deferred dividends. The Companies (Temporary Restrictions on Dividends ) Act, 1976, with effect from 6th July, 1974, prohibited these two payments for two years. *See infra.*

Suppose a company held its annual general meeting on 11th June, 1975 to consider the accounts for the financial year ending 31st December, 1974. It will have time for 42 days till 21st July, 1975 (inclusive) to post the dividend warrant in respect of all the three categories of dividends as aforesaid. It cannot postpone the posting of the two deferred dividend warrants to a later date, on the plea that these payments are to be made only in July, 1976 and July, 1977. The shareholder who is currently registered in the Register of Members of the company on a particular specified date with reference to the closing of such Register (the beginning or the closing date of the books' closure period, both days inclusive) is the person who is entitled to the three dividends aforesaid. If the posting is postponed to 1976 or 1977, it may happen that before the actual payment dates, during the long interval, some shareholders might have transferred their shares (obviously for value *cum* these deferred dividends). Income-tax is payable by the shareholder or the transferee on these deferred dividends within 35 days from the date on which such instalment becomes due and payable to the assessee or the warrant in respect of such instalment is transferred by the assessee to any person, whichever is earlier [*vide* sub-clause (10) of new clause 5-A]

### *Interest payment*

Now suppose a company has dated the " immediate dividend" warrant as on 21st July, 1975, the first deferred dividend warrant as on 5th July, 1976 and the second deferred dividend warrant as on 5th July, 1977, making the period of validity of all these warrants six months from these respective dates (assuming that this procedure will conform to the Rules and *pro forma* of the dividend warrant yet to be prescribed). Then, no interest is payable on the " immediate dividend " for any period, and the interest will become payable on the first instalment of the deferred dividend from 21st July, 1975 to 4th July, 1976 (because the last day of the expiry of the first year two years after 6th July, 1974 is 5th July, 1976 and the amount is payable on that date-vide new section 5-A (2) of the principal Act *i.e.*, the Companies (Temporary Restrictions on Dividends) Act, 1974, and on the second instalment of the deferred dividend from 21st July, 1975 to 4th July, 1977 (because the last day of the expiry of two years' ban on payments after 6th July, 1974 is on 5th July, 1977). It seems that these assumptions may be correct.

But, suppose in the same instant case, the company, instead of availing of the maximum period of 42 days for paying the dividend or posting the D.W., had fixed a definite date within the statutory limit of 42 days, say 25th June, 1975, then it would have dated its " immediate dividend " warrant as on 25th June, 1975 and

valid for 6 months thereafter. It would have dated the first deferred dividend warrant as on 5th July, 1976 and the second deferred dividend warrant as on 5th July, 1977 and posted all the three D.Ws'. on or before 25th June, 1975. In this case, no interest is payable by the company in respect of the "immediate dividend", but interest will become payable on the first deferred dividend from 25th June, 1975 to 4th July, 1976 and on the second deferred dividend from 25th June, 1975 to 4th July, 1977, as in the first example. Here too, these are assumptions made in the absence of specific Rules. They appear to be correct.

No interest is payable by the Company on the first instalment of the deferred dividend from 5th July, 1976 and on the second instalment from 5th July, 1977, till they are claimed.

*Tax Deduction.*

One will have to guess again the *pro forma* of the certificate of Deduction of Tax from Dividends under section 203 of the Income-tax Act, 1961, usually printed on or on the reverse of the D.Ws.

In the instant case (first example), the company may have to attach the said certificate in the case of all the three categories of dividends (immediate and two deferred) that a total (including income-tax and surchage) of 23, 23 and 33 per cent as per the current rates has been deducted respectively according to the status of the shareholder as resident individual, domestic company and non-resident individual and that the tax so deducted on all the three categories/amounts of the dividends will be paid within a week commencing from 21st July, 1975 (or from 25th June, 1975, in the second example) to the Central Government.

But, what is the procedure if the company cannot take the risk of assuming this procedure or the *pro forma* for the D.W (including the Certificate of Deduction as aforesaid)? Only the Rules, when published, will confirm, or inform.

*Unpaid Dividend Account*

But an interesting feature is this: In the instant case, first example, if the "immediate dividend" warrant was dated and posted on 21st July, 1975 and the company has allowed 3 months for the validity of the D. W., the shareholder could get this payment out of the dividend warrant account opened by the company with any bank of its choice within 42 days *i.e.*, on or before 31st August, 1975. After this period, the company should transfer all unclaimed or unpaid dividends remaining in this account to an "unpaid dividend account" in a scheduled bank as envisaged in section 205-A (1) of the Companies Act. Those shareholders who have not encashed their D. Ws. on or before 31st August, 1975 cannot be paid from the original account but only from the second or unpaid dividend account. They can be so paid from this account for another 48 days after 31st August, 1975 till the validity period of the D. W. (3 months) is over. If the dividend remains unpaid or unclaimed in this "unpaid dividend account" for 3 years from the date of transfer to this account, the company has again to transfer the amount of such unclaimed dividends to the "general revenue account" of the Central Government. It appears, therefore, that the company cannot mention in the "particulars as may be specified by the Rules prescribed" that, after the period of validity of the D. W. is over, the shareholder should claim payment, not from the bank, but only at the Registered Office of the company. Such a practice obtained before the Companies (Amendment) Act of 1974 introduced section 205-A, but there appears to be no provision

for the re-transfer of the unclaimed dividends from the account in the bank to the Company's funds and or the company itself making the payment at the Registered Office.

*Anomaly*

Here, therefore, arises an anomaly. The writer has found in a deferred payment D. W. issued by The Century Spinning and Manufacturing Company Ltd., Bombay (without waiting for the officially published Rules and *pro forma* of D. W.) that after the six months period of the validity of that D. W. is over the shareholder should present that D. W. only at the Registered office of the Company and obtain the payment.

But sub-section (5) of section 5-A of the Companies (Temporary Restrictions on Dividends) Act, 1974 as amended by the 1975 Amendment Act says that the provisions of section 205-A of the Companies Act, 1956 shall not apply to any instalment of deferred dividend : *Provided* that the whole or any part of an instalment of deferred dividend remains unpaid after the expiry of a period of 30 days from the date on which such instalment becomes due and payable, the provisions of the said section 205-A shall apply to the amount so remaining unpaid". The proviso is to be noted.

Take the instant case, first example (*supra*). The first instalment of deferred dividend becomes due and payable on 5th July, 1976. So, if a company had opened a dividend warrant account with a bank before 5th July, 1976 and arranged with the bank to pay this deferred dividend from this account, it could be so paid from that account only for 30 days from 5th July, 1976. If any such deferred dividend then remains unclaimed or unpaid, the company should transfer that total amount to an "unpaid dividend account" with a scheduled bank and arrange for making further payments only from that account. Section 205-A Proviso above stated will apply. The Company cannot ask the shareholder (after the lapse of the 30 days) to obtain payment only at the Registered Office of the Company. The only difference between the application of section 205-A (1) to the "immediate dividend " and the "deferred dividend" is that in the former case the unclaimed or unpaid dividend is to be transferred to the "unpaid dividend account" after the lapse of 42 days from the date of declaration but in the case of the first and second instalments of the deferred dividends they should be so transferred to such an account when 30 days have elapsed from 5th July, 1976 or 5th July, 1977 respectively, and the deferred dividends still remain unpaid or unclaimed. It is not understandable, therefore, how The Century Spinning and Manufacturing Company Ltd., could direct the shareholder to come to the Registered Office of the company to obtain payment of the deferred dividend after the lapse of six months from the date of the deferred dividend warrants (5th July, 1976 or 5th July, 1977). Of course, the Company need not make any immediate deposits in a bank in respect of the deferred dividends ; it can do so just a few days before 5th July, 1976 or 5th July, 1977.

*General Revenue Account.*

As a matter of fact, the same "particular" is found in the "immediate dividend" warrant also, that the shareholder should obtain payment after the lapse of six months from the Registered office of the company. This is clearly against the mandatory provision in section 205-A that the unclaimed or unpaid dividend after the lapse of 42 days should remain only in the "unpaid dividend account" and if it so remains for three years from the date of transfer to such account the amount so

accumulated should be transferred to the "general revenue account" of the Central Government. The shareholder should then make his claim to that Government. It is clear from section 205-A that in no case, whether it is immediate dividend or deferred dividend, the company can withdraw any amount from the "unpaid dividend account" and *make the payment* at the Regsitered Office as The Century Spinning and Manufacturing Company Ltd., has directed in all the three D. Ws. The purpose and object of section 205-A will be defeated if the company reserves a right to make such payments itself after the expiry of the validity period of the D. Ws., and also not from the "unpaid dividend account".

It is also to be noted that there is no provision in the Companies Act for the transfer of the unclaimed or unpaid dividends directly from the company's own account to the general revenue account. The company should so transfer to the general revenue account the unclaimed or unpaid dividends after they have remained in the unpaid dividend account for three years. When once the company has deposited the unclaimed or unpaid dividends in the unpaid dividend account it can effect further payments or dispose of the money only according to the statutory provisions or the prescribed Rules.

*Unsafe Example.*

It seems to me, therefore, that the "particulars contained in the three Dividend Warrants at least in so far as the direction to the shareholder to obtain payment from the Registered Office after the expiry of the period of validity of the Dividend Warrant is incorrect and invalidates the D. Ws. as surely they cannot be in conformity with the Rules to be prescribed. The Rules can only follow the statutory provisions described in the foregoing. The "particulars" given by the company, therefore, do not conform even in the first instance to the substantive provisions of the Act itself.

It seems that The Century Spinning and Manufacturing Company Ltd., has taken a risk in guessing the *pro forma* of the D. W., and it is unsafe for other companies to follow that example. Having declared the dividend at the annual general meeting, if the company finds that the *pro forma* of the D. W. is not published yet, the company can only deposit the entire dividends amount in the "unpaid dividend account" in a scheduled bank and wait indefinitely till the Rules are prescribed to make out the D. Ws. Section 5-A (9) of the Companies (Temporary Restrictions on Dividends) Act, 1974, as amended in 1975 says categorically that the D. W. shall be in such form as may be prescribed. If the anticipatory *pro forma* now used is found later on not conforming to the prescribed form, what is to happen?

However, it will be well if the Central Government publishes the Rules as soon as possible without waiting for the approval of such Rules by both Houses of Parliament as required by section 12 of the Companies (Temporary Restrictions on Dividends) Act, 1974. This section reads:

"12. *Power to make rules*—(1) Every Rule made by the Central Government under this Act shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Rule or both Houses agree that the Rule shall not be made, the Rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modi-

fication or annulment shall be without prejudice to the validity of anything previously done under the rule."

Let the companies which are anxiously waiting for the Rules have them earliest possible, and whatever they do *under these Rules* till they are approved or modified by both Houses of Parliament will be quite valid. What is done under imagined Rules may not be found valid. It is hoped that the official Rules and the *pro forma* of the D.W. to be published will steer clear of the many problems posed in the foregoing and give unambiguous directions to the companies and the shareholders.

## A NOTE ON G. AMBIGA AMMAL v. SELVARAJA MUDALIAR.

*By*

P. S. SUNDARAM, M.A.,M.L.

*Advocate, Tuticorin.*

In *Ambiga Ammal* v. *Selvaraja Mudaliar*[1], decision of Justice C. J. R. Paul, he has held that the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) is inapplicable to buildings owned by Religious and Charitable Institutions even with regard to pending proceedings (*i.e.*) those petitions or appeals filed before the notification was issued by the Government of Tamil Nadu under section 29 of the Act. Section 29 empowers the Government to exempt any building or class of buildings from all or any of the provisions of the Act by means of notification. In view of the powers so granted the Government of Tamil Nadu under G.O.Ms. No. 1998, dated 12th August, 1974 exempted the operation of the Act with regard to the buildings owned by Hindu, Christian, and Muslim Religious Trusts and Charitable institutions from all the provisions of the Act.

In the reported case the trustee of a bajanai kovil preferred a revision to the High Court under section 25 of the Act against the tenant in view of the dismissal of the petition by the lower Courts. Justice C. J. R. Paul, has held that the notification of the Government disarms the Court to deal even with pending proceedings and dismissed the revision petition.

The power of the Legislature to effect retrospective legislation has been time and again affirmed by the Courts in India. But the distinction will have to be borne in mind between legislative power and subordinate legislative power. Subordinate legislative power arises in cases when the Legislature vests the right to make rules or notifications or bye-laws with the Government.

The highest Court of the land in *Income-tax Officer, Allepy* v. *M. C. Ponnuse*[2] has held that unless the Legislature gives the power to effect rules, notifications and bye-laws retrospectively the power is deemed to be effected prospectively. The decision relied on by the learned Judge *Mulla* v. *Godhu*[3], pertains to the realm of legislation and not subordinate legislation. The learned Judge has not borne this distinction in mind. The decision of Justice Balakrishna Iyer, cited by the counsel for the appellant in *S. A. Seshadri* v. *Narayana*[4], is equally applicable to the facts on hand dealt with by Justice C. J. R. Paul. The distinction made by the learned Judge between temporary legislation and permanent legislation is not germane and in turn has deviated the Judge in arriving at a correct conclusion. In short the Court retains its power under the Rent Control Act in pending matters which have come into being before the notification was issued.

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1. (1975) 2 M.L.J. 51 : 88 L.W. 456.

2. (1970) 1 I.T.J. 190: (1970) 1 S.C.J. 435: (1970) 1 S.C.R. 678: A.I.R. 1970 S.C. 385.

3. (1970) 2 S.C.R. 129: (1970) 2 S.C.J. 258: A.I.R. 1971 S.C. 89.

4. (1949) 2 M.L.J. 396: 62 L.W. 627: A.I.R. 1950 Mad. 106.

## ORDER 17, RULE 3 OF THE CODE OF CIVIL PROCEDURE—NEED FOR AMENDMENT.

*By*

S. S. KADER, *District* and *Sessions Judge.*

Order 17, rule 3 of the Code of Civil Procedure is one of the controversial provisions of the Code, which has given rise to a conflict of judicial decisions. The rule runs thus:

"Where any party to a suit to whom time has been granted, fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith".

The Rule comes into play only when the previous adjournment was at the request of the party, who commits default even on the adjourned date and the previous, adjournment had been granted for one of the reasons mentioned in the rule, *viz.*, to produce evidence or to cause the attendance of witnesses or to perform any other act necessary to the further progress of the suit. So far there is no doubt or dispute. But when we come to the adjourned date, the question arises as to whether the defaulting party must appear in Court and even if he appears, should he be ready to proceed with the suit before the provisions of Order 17, rule 3 can be invoked. So far as our High Court is concerned, the position is well settled by the Full Bench decision of our High Court rendered in *Prativadi Bhayangaram Pichamma* v. *Kami Chetty Sriramulu*[1], where it has been held that if the party does not appear on the adjourned date, then notwithstanding the conditions laid down in rule 3 of Order 17 being satisfied, the Court cannot dismiss the suit under Order 17, rule 3 but can only proceed under Order 17, rule 2 of the Code of Civil Procedure. The High Court of Andhra Pradesh in its Full Bench decision rendered in *Agaiah* v. *Mohamed Abdul Karim*[2], has adopted the same view. But the Full Bench of the High Court of Rajasthan has taken a diametrically opposite view and held that where a party, to whom time has been granted for production of evidence or for the purpose of doing any other act necessary for the further progress of the suit, does not appear, it is a case of double default and the case is not taken away from the purview of Order 17, rule 3 of the Code of Civil Procedure. The High Court of Calcutta has held that if there are materials on record, the Court ought to proceed under Order 17, rule 3 of the Code of Civil Procedure, of course, when the previous adjournment had been at the instance of the defaulting party (vide *Brojendra Nath Ganguli* v. *Promatha Bhusan*[3], A Full Bench of the High Court of Bombay has also taken the view that if there are materials before it, the Court can proceed with the case under rule 3 of Order 17 and dispose of the matter on merits notwithstanding the absence of the party. (Vide *Basalingappa* v. *Shidramappa*[4].)

The next point for consideration is, whether the mere presence of the defaulting party in Court on the adjourned date is sufficient to enable the Court to proceed under Order 17, rule 3 of the Code of Civil Procedure. In other words, can the defaulting party be said to have "appeared" in Court when he is not ready to proceed with the suit? It is now well settled by a catena of judicial decisions of our High Court that the mere physical

1. 34 M.L.J. 24 : 43 I.C. 566: (1918) I.L.R. 41 Mad. 286.

2. (1960) 2 An.W.R. 416 : A.I.R. 1961 A.P. 201 (F.B.)

3. A.I.R. 1933 Cal. 412.

4. A.I.R. 1943 Bom. 321 (F.B.)

presence of a party in Court, who or whose counsel does no more than apply for an adjournment and who, on the adjournment being refused, refuses to go on with the suit, does not amount to appearance". In *Kaliappa Mudaliar* v. *Minor Kumaraswami Mudali*[5] a Bench of our High Court consisting of Phillips and Madhavan Nair, JJ., held that the mere physical presence of the defendant did not constitute an appearance, which contemplates only an appearance with the intention of pleading in a suit. In *Adhimoolam Pillai* v. *The Secretary of State for India in Council*[6], the pleader and the party were both present in Court and both of them were not prepared to go on with the suit and Kumaraswami Sastri and Wallace, JJ., held that the dismissal of the suit was one for default under Order 17, rule 2 of the Code of Civil Procedure. To the same effect are the single Bench decisions of our High Court rendered in *Kovuammal, In re*[7]; *Pathuri Venkateswara Rao* v. *Parvataneni Subramaniam*[8]; *Karpatti Chinna Basava Sathyanarayana* v. *The Hindu Religious and Charitable Endowments Board, Madras*[8-a]; *Isaka Venkata Reddy* v. *Vemireddi Ranga Reddi*[9] and *Natesa Thevar* v. *Vairavan Servai Karan*[10]. In the recent unreported decision in *Pavaiammal and another* v. *Cheliappa Goundar and another*[11], N. S. Ramaswami, J., has elaborately dealt with this settled position of law. In *Bali Reddi* v. *Lakshamamma*[12], it was held by Horwill, J., that even a request by the counsel to pass over the case for an hour or two did not amount to a step in the prosecution of the proceedings and the dismissal of the suit was only under Order 17, rule 2 and not under Order 17, rule 3 of the Code of Civil Procedure. In *Govindarajulu Naidu* v. *The Imperial Bank of India, Vellore*[13], on the adjourned date the pleader for the 1st defendant filed an additional written statement and a fresh issue was also framed at his request, but he reported no instructions thereafter and the Court proceeded with the suit and decreed it against the 1st defendant. A Bench of our High Court consisting of Curgenven and Cornish, JJ., held that the acts of the pleader in filing an additional written statement and in applying to the Court for the framing of a fresh issue were acts done by him in the conduct of the suit and towards the progress of the suit and they constituted appearance of the party. *Dhakshinamoorthy Kandar* v. *Ponnuswami* alias *Karuppu Kandar*[14], is another Bench decision of our High Court, where on the adjourned date, the plaintiff, to whom time had been granted to engage a new counsel and go on with the suit, filed in person two applications, one for an adjournment and another for the examination of a witness on commission, but he refused to examine himself and proceed with the trial on that day, whereupon the Court dismissed the suit and it was held by Sir Federick William Gentle, C.J., and Mr. Thyagarajan, J., that the plaintiff by filing the application in person for issue of a commission "appeared" in Court and also took a step in the prosecution of the suit. Following the aforesaid Bench decision, in *Dhakshinamoorthy*

5. (1926) 51 M.L.J. 290: A.I.R. 1926 Mad. 971.
6. (1928) 54 M.L.J. 35.
7. 148 I.C. 177: A.I.R. 1934 Mad. 199 (1).
8. (1939) 2 M.L.J. 611: 50 L.W. 430: A.I.R. 1939 Mad. 974.
8-a. (1945) 1 M.L.J. 331: 58 L.W. 297: A.I.R. 1945 Mad. 300.
9. (1948) 1 M.L.J. 452: 58 L.W. 266: I.L.R. (1946) Mad. 103: A.I.R. 1945 Mad. 270.
10. (1955) 1 M.L.J. 20: I.L.R. (1955) Mad. 883 : A.I.R. 1955 Mad. 258.
11. C.R.P. Nos. 2706 to 2708 of 1973.
12. (1943) 2 M.L.J. 350 : 56 L.W. 488 (2): A.I.R. 1943 Mad. 728.
13. 68 M.L.J. 123: (1935) I.L.R. 58 Mad 817 : A.I.R. 1935 Mad. 210.
14. (1948) 1 M.L.J. 65: 61 L.W. 63: A.I.R. 1949 Mad. 78.

*Kandar* v. *Ponnuswami* alias *Karuppa Kandar*[15], Ramaprasada Rao, J., in *Gopal Gounder* v. *Ambujammal*[16], where the plaintiff after examining herself as P.W. 1 and marking certain documents, filed a petition for transfer of the suit, but the Court dismissed the petition and the suit, held that the plaintiff should be deemed to have appeared and participated in the trial on that day when the suit was dismissed and that the disposal must be deemed to be under Order 17, rule 3 of the Code of Civil Procedure. These decisions do really confirm the settled view that the mere physical presence of a party in Court who or whose counsel does nothing beyond asking for an adjournment, will not constitute an "appearance" in Court in order to attract the provisions of Order 17, rule 3 of the Code of Civil Procedure. I must here and now refer to a recent Single Bench decision of our High Court rendered in *Corera and Brothers* v. *The Chief Secretary, Government of Pondicherry*[17], which seems to strike a different note. There the suit was posted to 7th August, 1972 for trial at the request of the defendant and on payment of costs of Rs. 200 and on that adjourned date the defendant's counsel was not ready to proceed with the suit. The Court proceeded with the matter, reserved orders and on 21st August, 1973 decreed the suit on merits. It was held by our High Court that the case fell under Order 17, rule 3 of the Code of Civil Procedure. On the finally adjourned date neither the defendant nor his pleader took any step in the further progress of the proceedings and the defendant cannot therefore be said to have "appeared" as a party partaking in the proceedings. The fact that the defendant has been consistently committing defaults—the suit had once before been decreed *ex parte* and the decree had been set aside, and even thereafter the defendant has been taking several adjournments and the last one was on payment of heavy costs of Rs. 200—cannot bring the case within the ambit of rule 3 of Order 17 of the Code of Civil Procedure, when on the final date of hearing, the defendant did not participate in the proceedings. It is therefore, respectfully submitted that the decision in *Corera and Brothers* v. *The Secretary, Government of Pondicherry*[17], is not in accordance with the long line of decisions of our High Court.

The facts of this case in *Corera and Brothers* v. *The Secretary, Government of Pondicherry*[18], however, bring to light the utter helplessness of trial Courts in invoking the provisions of Order 17, rule 3 of the Code of Civil Procedure and dealing with the matter on merits. The defaulting party at whose instance adjournment had been granted, can effectively prevent the Court proceeding under Order 17, rule 3 of the Code of Civil Procedure either by remaining absent on the adjourned date or by refusing to participate in the proceedings even when he is physically present. Rule 3 of Order 17 of the Code of Civil Produre, is thus virtually a dead letter, unless the defaulting party is indiscreet enough to appear in Court and do some act in furtherance of the prosecution of the suit. All the Courts in our State follow the list system in letter and spirit and suits are posted in the ready list not less than a month in advance and yet litigants are not wanting who take the matter in a light-hearted manner and allow the suit to be dismissed for default or decreed *ex parte* and not infrequently, on some undertsanding between the

15. (1948) 1 M.L.J. 65 : 61 L.W. 63 : A.I.R. 1949 Mad. 78.

16. (1967) 2 M.L.J. 502 : 80 L.W. 441: A.I.R. 1968 Mad. 222.

17. (1975) 1 M.L.J. 155.

18. (1975) 1 M.L.J. 155.

## AMOUNT FORFEITED FOR BREACH OF CONTRACT TO BE INCLUDED OR EXCLUDED IN A SUIT FOR DAMAGES ?

*By*

R. THILLAI VILLALAN, M.A., B.L.,
*Corporation Legal Adviser.*

An interesting question has been raised, whether the forfeited amount for breach of contract by virtue of forfeiture clause in mercantile or any other contracts is to be included and given credit to in a claim of compensation by way of damages in a suit filed subsequently by the person who is aggrieved by the breach of contract, by Ismail, J. in, *M/s. Sudhakar & Company by Proprietor M. Sivagnanammal* v. *Corporation of Madras.*[1] He followed the Full Bench decision in *Vellore Taluk Board by its President* v. *Gopalasami Naidu*[2] and came to the conclusion that the party aggrieved should not be allowed to make profit out of the breach of the contract and he is entitled only to reasonable compensation but not for both forfeiture and damages.

In the Full Bench decision it is stated that "where a person deposits a certain amount as earnest money for the performance by him of his part of the contract thereafter the other party who becomes entitled to retain the deposit as forfeited under the terms of the contract must, in a suit by him for damages for the breach of contract, give credit for the amount retained as forfeited and can only recover the difference between the actual loss sustained and the amount of forfeited deposit".

For the purpose of clear understanding the proposition of law in this respect the importance and relevant portions in the judgment are reproduced hereunder.

"The facts of the case appear fully from the judgments of Spencer and Sadasiva Iyer, JJ., reported in *Vellore Taluq Board* v. *Gopalasami Naidu*[3]. The appellant was the President of the Taluq Board of Vellore. The respondent was a contractor under the said Board of the right to collect market fees at the weekly fairs held at Karadigudi. As an earnest of his intention to perform the contract, he deposited a sum of Rs. 36-2-8, being two months' rent in advance. In case of default he agreed, 'not only shall I (the defaulter) be deprived of the lease for the remaining months, but there shall be a re-sale at my risk and any loss resulting therefrom shall be made good from the moveable or immoveable properties belonging to me, and I shall also forfeit the aforesaid deposit of Rs. 36-2-8 paid by me.' He did make default in the regular payment of the monthly rents on the due dates, and acting on the terms of the contract, the Taluq Board re-sold the right at his risk and sued to enforce the contract. The District Munsif before whom the suit was brought allowed the plaintiffs' claim for loss less the deposit amount. On a revision petition by the Taluq Board, Spencer, J., found that the suit was to enforce two of the stipulations in the contract, *viz.*, (1) that any loss resulting from a re-sale held in consequence of the defendant's default should be recovered from his properties; (2) the defendant should forfeit this deposit of Rs. 36-2-8, and held that the person suffering loss on default was entitled to recover the actual loss over and above the amount of deposit forfeited, while Sadasiva Aiyar, J., found that the suit was not to enforce both the stipulations in the contract referred to above but to enforce only the first of those stipulations, the plaintiff Board having, before bringing

1. A.S. No. 887 of 1971 and A.S. No. 523 of 1974 dated 24th July, 1975.
2. (1915) I.L.R. 38 Mad. 801; 26 I.C. 226.

3. (1913) M.W.N. 1025: (1913) 21 Ind. Cas. 759.

the suit, treated the deposit of Rs. 36-2-8 which was with it as already forfeited, and held that the plaintiff could not recover more than the difference between the loss incurred by him and the deposit money. In the result the petition was dismissed and the plaintiff Board appealed under clause 15, Letters Patent.

[Mr. S. Varadachariar for Mr. L. A. Govinda Raghava Iyer, for the Appellant:—According to the view of his lordship Justice Sadasiva Aiyar, no difference is made between the cases where the date of payment is expressly provided for and where no date is fixed. *Essex* v. *Deniell*[4], is clear on that point.

*Sir John Wallis Officiating C J.*—Was that case cited below ?

Mr. S. Varadachariar—No, it was not, In the English case, there is a distinct provision that the deficiency should be paid out of the re-sale.

In the present case also there is a reference to the re-sale.

*Cornwall* v *Hanson*[5].

*Sir John Wallis, Officiating C.J*:—Where is the rule that when property is deposited it becomes the property of the depositee ?) Mr. S. Varadachariar :—I say by reason of the breach.

*Ayling, J.*—Do you mean to say that by reason of the breach, it becomes his? *Sir John Wallis, Officiating, C J.*—How does *Howe* v. *Smith*[6] decide the case? It only concerns itself whether the amount deposited could be recovered back.

Mr. S. Varadachariar.—Fry, J., makes special reference to *Howe* v. *Smith*[6]. The basis of *Ockenden* v. *Herly*[7] is inconsistent with *Howe* v. *Smith*[6].

4. (1875) L.R. 10 C.P. 538.
5. (1900) 2 Ch. 298.
6. (1884) 27 Ch. D. 89.
7. 27 L.J. Q.B. 361.

*Sir John Wallis, Officiating C J.*—Sometimes the earnest takes the form of a plate, something which will not give anything.

Mr. S. Varadachariar at bottom of page 104, he refers to the same observations.

*Sir Wallis, Officiating C J.*—How do you explain Fry, J.'s observations ?

Mr. S. Varadachariar : There are two other cases, *Griffiths* v. *Vezey*[8] and *Shuttleworth* v. *Clews*[9]. Both of them are inconsistent with each other. The second case is a judgment of Joyce, J. In the argument, reference is made to *Ockenden* v. *Herley*[10].

*Sir John Wallis, Officiating C J.*—Payment of deposit is a part-payment of purchase money.

Mr. C. R. Subramania Aiyar, for the Respondent, was not called upon.

JUDGMENT.—We think the case is covered by the authority of *Ockenden* v. *Herley*[10] which was distinguished in *Essex* v. *Daniell*[11] and referred to with approval by Fry, J. in *Howe* v. *Smith*[12] and was apparently folllowed by Joyce, J. in the most recent case of *Shuttleworth* v. *Clews*[9]."]

But the party aggrieved in breach of contract has suffered loss both mentally and physically. The one is intangible and the other is tangible ; the former is immediate and the latter is afterwards. At the very moment when the breach is caused the party will be affected and injured, that is why the forfeiture clause is included in all forms of contract. It is not a penal clause or clause to make profit out of the contract. This aspect has to be considered when we attempt to

8. (1906) 1 Ch. 796.
9. (1910) 1 Ch. 176.
10. 27 L.J.Q.B. 361.
11. (1875) L.R. 10 C.P. 538.
12. (1884) 27 Ch. D. 89.

calculate the compensation by way of damages, in case of breach of contract.

In this connection it is better to refer to *M/s. Variety Body Builders* v. *The Union of India*[13] in which the term 'legal injury' is used. The party aggrieved is entitled to claim damages both for inconvenience and for actual loss by non-performance of a part of the contract. We may call the loss by inconvenience by the breach as 'legal injury' which will arise immediately and the actual loss by completing the non-fulfilled part of the contract as 'actual damages' which will come later in all these contracts. Therefore it does not stand to reason that the amount forfeited for part of damages should be given credit in the amount claimed in a suit for the remaining part of the damages filed subsequently Therefore the Full Bench decision requires reconsideration.

In this aspect, the *Union of India* v. *Rampur Distilleries and Chemical Company Limited*[14], may be considered because it deals with forfeiture for default. It says that the party to a contract taking security deposit from the other party to ensure the due performance of the contract is not entitled to forfeit the deposit on ground of default when no loss is caused to him is a consequence of such default. Therefore, the claim of damages for breach of contract has to be thoroughly reviewed in view of the decisions cited supra.

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13. A.I.R. 1973 Guj. 256.

14. A.I.R. 1973 S.C. 1098.

## PRINTED COPIES OF THE ORDERS AND C. M. AS. UNDER ACT XVII OF 1960.

*By*

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*Advocate, Tiruvannamalai.*

The question to be considered herein is whether a printed copy of the order of a Rent Controller is necessary, even if the said order exceeds 700 words, to prefer an appeal.

The filing of a printed copy of the judgment is insisted upon by the Appellate Courts, in accordance with the Madras Amendment to Order 4, rule 1, Civil Procedure Code. Order 43, rule 1, Civil Procedure Code. is applicable to appeals against orders and rule 2 makes the procedure contemplated in Order 41, rule 1, applicable to appeals against orders too.

To obtain a printed copy, rule 135 of the Civil Rules of Practice is to be followed while to get a certified copy, the relevant rule is 127, so far as the mofussil Courts are concerned.

The word ' civil Court ' is used in Order 41, rule 1, Order 43, rule 2 and rule 135 mentioned above. In other words, printed copy is necessary only if the appeal is against the judgment or order of a civil Court. It is needless to point out the differences between the two rules, *i.e.* 127 and 135.

It is very clearly laid down by our High Court that a Rent Controller is not a Court and he is only a *persona designata*. Reference in this connection may be made to the decision reported in *Ganapathy* v. *Kumaraswami*[1]. Hence, certainly a Rent Controller is not a civil Court.

Further, The Tamil Nadu Buildings (Lease and Rent Control, Rule 15 requires that a copy of the order of the Controller shall be filed along with the appeal. It is significant to note that it does not say "a printed copy" in contrast to Order 41, rule 1 (Madras Amendment) Civil Procedure Code.

Appeals against the orders of the Rent Controller are preferred under section 23 of the Tamil Nadu Act XVIII of 1960 as amended by Act of XXIII of 1973. The proviso to section 23 (*b*) runs as follows :

" In computing the fifteen days aforesaid, the time taken to obtain a *certified copy* of the order appealed against shall be excluded." Here also the significant omission of the word 'printed copy' is to be noted.

Rule 24 of the Tamil Nadu Buildings (Lease and Rent Control), Rules 1974, deals with the procedure for obtaining certified copies and sub-Rule 2 says. "The procedure laid down in Civil Rules of Practice and circular orders in regard to making application for and grant of certified copies, shall, as far as may be, apply to the applications and grant of copeis under sub-rule (1) ". As already stated *supra* Civil Rules of Practice 127 deals with certified copies, and rule 135 pertains to printed copies.

The Rule-framers of the Tamil Nadu Act XVIII of 1960 are conscious about the rule pertaining to the obtaining and filing of printed copies, and that of certified copies and the differences between the two. They have taken into consideration that:(*a*) the Act XVIII of 1960 is a special enactment and Civil Procedure Code is not applicable to it ; (*b*) the reduction in appeal time which is only 15 days instead of 30 days ; (*c*) the significance of getting the signature of the appellant in the memorandum of appeal (C.M.A.);

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1. (1975) 2 M.L.J. 171.

and (*d*) The importance of the specification of the date on which the copy of the order (of the Rent Controller) was received by the appellant; and, have intentionally omitted the word 'printed copy' and put the word 'certified copy' in section 23 of the Act and rule 15 thereof. They have also taken into consideration that Civil Procedure Code, Order 41, rule 1 and Order 43, rules 1 and 2 and Civil Rules of Practice. Rule 135 are applicable only to the Judgment or Order of a *civil court* and that a Rent Controller is not a civil Court.

Therefore it is not necessary to file printed copies of the orders along with the memorandum of appeal against the orders of the Rent Controller, even if the words exceed 700.

Usually the printers take 6 to 8 weeks to print the copies of judgments and orders. If the Rent Controller grants time of about 6 weeks for a tenant to vacate the building, the tenant will be put to unreasonable hardship when he does not get a printed copy within the time granted. He will have to spend twice for copies as there is no procedure to obtain stay of execution before perferring an appeal.

Hence an explanatory circular order, in this wise, will be of much help to make the position crystal clear.

## VACANCY REMISSION UNDER MADRAS CITY MUNICIPAL CORPORATION ACT

*By*

R. THILLAI VILLALAN, M.A., B.L., *Corporation Legal Adviser.*

Section 105 of the Madras City Municipal Corporation Act which deals with vacancy remission reads as follows:

"105 (1) When any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in any half-year, the Commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is propotionate to the number of days during which the building was vacant and unlet in the half year.

(2) Every claim for remission under sub-section (1) shall be made during the half-year in respect of which the remission is sought or in the following half-year and not afterwards.

(3) (*a*) No claim for such remissions shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the Commissioner:—

(i) that the building is vacant and unlet; or

(ii) that the building will be vacant and unlet from a specified date either in the half year in which notice is delivered or in the succeeding half year.

(*b*) The period in respect of which the remission is made shall be calculated—

(i) If remission is sought in respect of the half year in which notice is delivered, from the date of delivery of the notice or from the date on which the building became vacant and unlet, whichever is later; and

(ii) if remission is sought in respect of the half year succeeding that in which the notice is delivered, from the commencement of the half year in respect of which remission is sought or from the date on which the building became vacant and unlet, whichever is later.

(*c*) Every notice under clause (*a*) shall expire with the half year succeeding that during which it is so delivered, and shall have no effect thereafter."

Under this section there is a scheme for allowing vacancy remission by the Corporation. The scheme contemplates the following circumstances for allowing remission:

(1) The building must be occupied by the owner; (2) must fall vacant for more than 30 consecutive days; (3) the amount shall not exceed the half of the tax; (4) proportionate to the number of days during which the building is vacant or unlet; (5) claim must be made during the half-year or subsequent half year but not later; (6) claim can be entertained only when he delivers a notice specifying date either in the half year or in the succeeding half year either at present or in the future; (7) date of delivery of notice or date of vacancy whichever is later; if in the succeeding half year in which notice of vacancy is served; (8) from the commencement of half year from the date of vacancy whichever is later; (9) notice of vacancy will be valid for 2 half years; (10) there must be 2 notices, one for notifying the vacancy and another for claim for vacancy.

In this connection it is relevant to note the *Corporation of Madras* v. *Jamal Mohideen*[1], in which Justice V. Ramaswami has held that 2 notices are necessary—one for notifying the vacancy and

1. S.A. No. 919 of 1971 (4-1-1974).

another for claiming the vacancy remission.

The important excerpts of the judgment are given below:

"The plaintiff has filed this appeal contending that the defendant is not entitled to any remission at all on the basis of Exhibits B-1, the letter of the defendant notifying the vacancy. The relevant, provision regarding remission is contained in section 105 of the Madras City Municipal Corporation Act, 1919. That section confers power on the Commissioner of the Corporation to remit property tax. But the right to claim this remission is subjected to certain conditions. The first of such conditions is that the owner of the building shall have previously delivered a notice to the Commissioner intimating the vacancy or informing him that the building would be vacant from any particular specified, future date. The other important condition is that the claim for remission should be made during the half year in respect of which the remission is sought or in the following half-year, but not afterwards. The third condition that has to be satisfied is that the building has been vacant and unlet for thirty or more consecutive days in any half year. In order, therefore, to entitle the owner for remission, he must not only intimate the vacancy but should also specifically make a claim for remission with reference to the particular period. It should not be sufficient compliance with the section if the owner has merely intimated that the building has been vacant from a particular date. Since the remission is to be calculated with reference to the number of days for which the building has been vacant in the particular half year, the claim therefore must state from what period to what period the building was vacant in order to enable the Commissioner to grant it. In this case, the defendant by Exhibit B-1 dated 21st January, 1965 informed the Commissioner, that the premises in question has fallen vacant from 1st January, 1965 and was still unoccupied. The letter further requested the Revenue Officer to note the same for the purpose of vacancy remission for the second half year of 1964-65. It should be noted that on 21st January, 1965, the building had not been vacant for thirty or more consecutive days. Therefore, the Revenue Authority of the Corporation could not have calculated any remission for the second half year of 1964-65 on the basis of this letter.

Further, the intimation as to when the building was re-occupied is also relevant for the purpose of claiming remission. Exhibit B-1 does not state for what period the premises was vacant. Therefore Exhibit B-1 could not be treated as valid claim for remission under section 105. The result is that the defendant is not entitled to any vacancy remission for the second half year of 1964-65.

There is no intimation of vacancy or claim for remission for the period subsequent to the second half-year of 1964-65. Both the Courts below have concurrently found that there can be no remission in respect therefor. There is no appeal therefrom.

In the result, the defendant is not entitled to any remission for any period and he is liable to the plaintiff in the sum of Rs. 1,399. 05 as claimed in the suit. The second appeal is accordingly allowed."

But in *Ramakrishnan and others* v. *Corporation of Madras*[2], Justices Ramaprasada Rao and Ratnavel Pandian, have taken a contrary view that notifiying the vacancy and claiming compensation may be in one notice. The relevant portion of the judgment reads as follows:—

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2. A.S. Nos. 122 and 123 of 1971 (27-2-1973)

"The legal contentions of Mr. R. Thillai Villalan, the learned counsel for the Corporation, are as follows :—Firstly he would say that the entitlement as to vacancy remission is not automatic, but depends upon certain requirements which the law compels the owner of the premises claiming such a remission to strictly adhere to. It is in this view it is said that the correspondence that ensued between the Corporation of Madras and the landlords prior to the institution of the action does not clearly point out that there has been such a compliance of the requirements under law. Basing his arguments on section 105 of the Madras City Municipal Corporation Act, learned counsel would say that, in order to gain an entitlement for vacancy remission, there should have been a notice prior to such a claim informing the Corporation of Madras not only as to the date when the premises had fallen vacant, but also the period during which such vacancy and unletting subsisted. In the absence of such a prior intimation or notice, a supervening claim as such cannot be the basis for the statutory entitlement. He has put the argument alternatively also thus: The statutory requirements under section 105 is that there should be two notices: *viz.* a notice of intimation about vacancy and unletting followed up by another distinct and separate notice making a claim for the vacancy remission. He would urge, therefore, that the correspondence that ensued between the respective parties would not satisfy the statutory requirements as above and in the light of it he would say that the claim ought to be rejected.

On the other hand, Mr. Chellasamy, learned counsel for the appellants, would urge that a statutory entitlement is intended for the benefit of the person who can claim it and a substantial compliance of the provisions which would form the basis for such a claim would be sufficient and that accent on the form ought to be avoided. With reference to the same correspondence already referred to by us, he would urge that the claim is in order and ought to have been accepted by the Commissioner. He also hesitantly put forward the plea that the second suit is barred under Order 2, rule 2, Civil Procedure Code. Both the parties, however are agreed that, if the claim for vacancy remission is sustainable in law, then the Corporation has to recalculate the amounts which the landlords are liable in law to pay for the various half years in question and, if on such a recalculation any amount is payable by the landlords, they would pay the amount which the Corporation would be entitled.

The Tamil Nadu City Municipal Corporation Act as modified in 1962, is a self-contained code and it is intended to consolidate and amend the law relating to the Municipal affairs of the City of Madras. Provisions like sections 137-B, 103 and 390-A of the Act are all features which indicate that the Corporation Act is a self-contained one not only in the matter of laying down the substantive law, but also in the manner in which the substantive law should be implemented and proceeded with both by the statutory authority as well as by the citizen who has recourse to it. It has set its own norms and guidelines in the matter of taxation and finance. One of the taxes, which the Municipal Council may levy is property tax. Section 99 of the Act provides that, if the Council by a resolution determines that property tax shall be levied, such tax shall be levied on all buildings and lands within the City of Madras, save those exempted. The other part of section 99 is not quite relevant for purposes of our discussion. Section 100 sets out the method of assessment of property tax. Section 101

enables the Council to grant exemption to certain buildings from the payment of property tax. There are also special exemptions provided for in section 102 which provides for an alternative basis of property tax in respect of certain properties. Section 103 mandates that property tax shall be a first charge on the building and the land and also upon the moveable property, if any, found therein and belonging to the person liable to pay such tax. Section 104 says that the property tax shall be levied every half year and shall, save as otherwise expressly provided in Schedule IV, be paid by the owner of the assessed premises within 15 days after the commencement of the half year. Section 105 deals with vacancy remission.

Sections 106 to 109 deal with certain obligations on the part of the owner in case of transfer of the building or reconstruction or demolition of the same, remission of taxes, and the powers of the Commissioner to condone non-compliance of certain requirements under the earlier provisions and also to call for information for purposes of assessing to property tax.

The cumulative effect of the above provisions is fairly clear. The levy is made every half year and this is the unit of taxation. Such a levy made every half year being the basis of taxation, the hypothesis, would prompt the taxing authorities to levy such a property tax for the other half year. It is in this respect that the distinctness and separability of every half year is maintained throughout in the Act. As early as 1893, this proposition was recognised and it has stood the test of time. A Division Bench of the Bombay High Court in *Pitamberdas v. Sambusar Town Municipality*[3], said that the levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year.

In relation to vacancy remission with which we are concerned in these appeals, there are certain guidelines in the matter of the method of application for remission and the consequential grant of it by the Commissioner. Section 105 (1) enables the Commissioner in cases where a building has fallen vacant and unlet for 30 or more consecutive days in any half year to remit that much of property tax as is provided for therein and in the successive sub-clauses. Section 105 (3) (*a*) says that no claim for such remission under section 105 (2) shall be entertained unless the owner has previously delivered a notice to the Commissioner that the building is vacant and unlet or that the building is likely to fall vacant and unlet from a specified date either in the half year in which the notice is delivered or in the succeeding half year. There is, therefore a provision for intimation of a prospective vacancy and unletting as well. Such a notice shall be followed up by a claim during the half year in respect of which the remission is sought or in the following half year and not afterwards. This is provided for in section 105 (2). The method by which remission should be granted is dealt with in section 105 (3) (*b*). This provision, read with section 105 (1), is obviously intended to enable the assessing authority to grant such remission to which the landlord would be entitled and which is obviously variable according to the facts and circumstances of each case.

At this stage, it would be necessary to state the nature of the enquiry which is contemplated under section 105 (3) (*b*).

3. (1893) I.L.R. 17 Bom. 510.

As vacancy remission and an enquiry thereinto involves investigation into rights and obligations, the enquiry officer, is a quasi-judicial tribunal who is to follow the principle of natural justice. He is to hear the affected party and after giving such a full and adequate opportunity to him reckon the vacancy remission to which the landlord may be entitled to and grant that, if he is so entitled to. In the instant case, we do not find any evidence that such an enquiry was held when the statutory authority rejected the vacancy remission. In a casual manner and without any due enquiry which is required of a quasi-judicial tribunal, the rejection was made. We, therefore treat such orders of rejection made as *non est* and unenforceable in the eye of law.

To continue, the important point to be noticed is that every notice contemplated under section 105 shall expire with the half year succeeding that during which it is delivered and shall have no effect thereafter. But, section 108-A enables the Commissioner at his discretion to condone the omissions to give notice under section 105 and other sections referred to therein. The point to be considered is whether, in the light of such statutory provisions, two independent and separate notices as urged by Mr. Thillai Villalan, are necessary under section 105 of the Act, one informing the taxing authority about the vacancy and unletting or the prospective vacancy or unletting followed up independently by a claim for remission. When the statute itself provides that the non-issue of notices contemplated under section 105 can be condoned at the discretion of the Commissioner, then obviously the provision as to delivery of notice contemplated under section 105 (3) (*a*) is one which is capable of being liberally construed.. The main intendment of the sub-clause (3) (*a*) (ii) of section 105 is that the taxing authority should be put on notice promptly about the vacancy and unletting or the prospective vacancy and that there should be a claim for vacancy remission as prescribed by the Act. The word 'previously' appearing in sub-clause (3) (*a*) of section 105 of the Act cannot be subject to a rigid interpretation. Taking the above relevant sub-clauses of section 105 together, we are of the view that both the information as to vacancy and unletting, as also the claim for remission under sub-clause (1) of section 105 being integrated one with the other, can be consolidated in one notice, as the purpose of the provisions is not lost by such a process. The learned counsel for the respondent says that the delivery of the notice regarding the vacancy should precede a claim and these provisions are mandatory. In our view, the word, 'previously' used in sub-clause (3) (*a*) of section 105 can serve only one public purpose. It is obviously intended to put the taxing authorities on notice of such vacancy or prospective vacancy and alert them to make such investigations as they may be inclined to make to test the truthfulness or correctness of such information. If a notice is cumulative in the sense that it is not only informative of the vacancy but also of the claim for remission inconsequence thereof, no prejudice is caused to the taxing authority. Viewed in this light the delivery of a consolidated notice containing information about the vacancy and coupling it with a claim for remission would not, in our view, be a non-compliance with the provisions of section 105 of the Act, and much less a departure from this provision. By way of analogy, the Supreme Court in *Somawanti* v. *State of Punjab*[4]. While con-

4. (1963) 2 S.C.J. 35 : (1963) 2 M.L.J. (S.C.) 18 : (1963) 2 An.W.R. (S.C.) 18 : (1963) 2 S.C.R. 774 : A.I.R 1963 S.C. 151 at p. 171.

sidering the provisions of the Land Acquisition Act and in a case where the notification under section 4 and the declaration under section 6 were contemporaneously made in one notification, expressed the view:

"A notification under sub-section (1) of section 4 is a condition precedent to the making of notification under sub-section (1) of section 6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of section 5-A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day."

Therefore, the serving of a consolidated notice containing the information as to vacancy and unletting coupling it with the claim for remission would subserve the substance of the requirements of section 105 and would not in any way be a departure from it. As in all cases the substance of the enactment has to prevail over the form, we are of the view, that notice under section 105 (3) (*a*) and the claim under section 105 (2) could be made in one notice and the inclusion of the claim for remission in the notice informing the authority about the vacancy cannot be equitably, justifiably or even legally be said to be non-compliance with the substance of the relevant requirements under section 105.

The decision of V. Ramaswamy, J., in S.A. No. 919 of 1971. which was placed before us by Mr. Thillai Villalan, runs as follows:

"That section confers the power on the Commissioner of the Corporation to remit property tax but the right to claim this remission is subjected to certain conditions. The first of such conditions is that the owner of the building shall have previously delivered a notice to the Commissioner intimating the vacancy, informing him that the building would be vacant from any particular specified future date. The other important condition is that the claim for remission should be made during the half year in respect of which the remission is sought or in the following half year but not afterwards. The third condition that has to be satisfied is that the building has been vacant and unlet for thirty or more consecutive days in any half year. In order, therefore, to entitle the owner for remission, he must not only intimate the vacancy but should also specifically make a claim for remission with reference to the particular period. It would not be sufficient compliance with the section if the owner has merely intimated that the building has been vacant from a particular date. Since the remission is to be calculated with reference to the number of days for which the building has been vacant in the particular half year, the claim therefor must state from what period to what period the building was vacant in order to enable the Commissioner to grant it."

We do not think that the learned judge has expressed the view that both the notice of vacancy and the claim for vacancy remission should be made under independant communications. What is, however, pressed into service is that in the claim for vacancy remission, the landlord must state from what period to what period the building was vacant in order to enable the Commissioner to grant it. This question would arise only in cases where there has been a partial vacancy or unletting of the premises during a particular half year. But if the premises was vacant for the entire half year the question may not arise. Even otherwise, section 105 (3) (*a*) compels the

landlord to deliver a notice to the Commissioner stating that the building is vacant and unlet or the building is likely to be vacant from a specified date either in the half year in which the notice is delivered or in the succeeding half year. It is only in the enquiry, which, as we have already stated is a quasi-judicial enquiry which is obviously contemplated under section 105 (3) (*b*), that the further hypothesis might be required in order to enable the taxing authority to reckon the actual benefit to which the landlord is entitled to in consequence of such vacancy. We are of the view that the landlord could furnish such particulars as to the period during which the building was vacant or is likely to be vacant during the course of such investigation by the taxing authority. If the opinion expressed by V. Ramaswami, J., in the above second appeal was that if the landlord failed to state from what period to what period the building was vacant, when he delivered the notice then there was no compliance with the norms set out in section 105, we are unable to share that view.

Another question has also been raised whether the vacancy remission is for a whole building or part of a building in *T.A.S. Ratnam Bros.* v. *Corporation of Madras*[5], Justice Raghavan has held :

"We are inclined to think the view of the Small Cause Judge on both the matters cannot be sustained. Section 99-I of the City Municipal Corporation Act authorises the Council by a resolution to determine that a property tax shall be levied on the buildings and lands within the City. The components of property tax are also set out in the section. The tax shall be levied at such percentage of the annual value of the buildings and lands as may be fixed by the Council. Method of assessment has been laid down by section 100. Under this provision, every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto, unless the owner of the building is a different person from the owner of such site or premises. What the annual value shall be, has been stated. After dealing with general and special exemptions and stating that property tax is a first charge on the property, the Act goes on to deal with vacancy remission in section 105. It says that, when any building, whether ordinarily let or occupied by the owner himself, has been vacant and unlet for thirty or more consecutive days in any half year, the Commissioner, shall remit so much not exceeding one half of the such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half year. Every claim for remission under sub-section (1) shall be made during the half year in respect of which the remission is sought for in the following half year and not afterwards. No claim for such remission shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the Commissioner that the building is vacant and that building will be vacant and unlet from a specified date either in the half year in which notice is delivered or in the succeeding half year. As to how the period in respect of which remission is made is to be calculated, has been indicated in the section. The expression " building " has been defined by section 3. But it does not say what the building is, the definition being an inclusive one. There is no indication in the definition itself whether a building as defined includes a part of the building. But there is no particular reason why, when vacancy remission is provided for a building, it should be confined only to the building in its entirety and not extended to a portion of it as well. A building normally in-

5. C.R.P. No. 1572 of 1971 dated 13th March, 1973.

clude a portion of the building unless it is specifically excluded. We are unable to see any indication in the definition of the expression "building" to exclude a portion of the building. It is conceivable that a building may be in separate portions capable of letting out independently. In that case, the annual value, which is the basis of property tax, will be calculated with reference to the rent fetched by each of such separate portions and the aggregate thereof. Logically, therefore, vacancy remission should extend to each portion of such building, because the tax is on the building, and the tax being calculated on the annual value which is the aggregate of rent fetched by each of the portions, the remission may well be related to that portion of the building which has been separately let out and has been vacant. We do not suggest that, for the purpose of remission, the separate portion for which remission is asked for should have been let out and for a period remained without letting out. Any portion which is vacant and duly notified will be eligible, in our opinion, for vacancy remission, subject of course to the limits and conditions imposed by section 105.

Our attention has, however, been invited to *Bhavani* v. *Corporation of Madras*[6]. There, Ismail, J., took the view that, on the language of section 105 and section 3 (4) defining "building" it must be held that the owner of a building was entitled to a remission of property tax only if the building remained wholly vacant or unlet. He was of the view that if any portion of the building was in occupation or let out, however small that portion might be, then the provisions of section 105 were not attracted. With respect, we are unable to concur with this view as to the scope of section 105. The learned judge referred to the definition of 'building' in the Madras Buildings (Lease and Rent Control) Act which included part of a building. But, there the definition is an exhaustive one and it is not an inclusive one. Section 2 (2) of that Act says that building means so and so. But that is not the case is the City Municipal Corporation Act. There the definition as an inclusive one. We consider, therefore, that the definition of "building" in section 2 bears no analogy which can be extended to a determination of the scope of the word "building" as used in the City Municipal Corporation Act. On the other hand, in *K.V. Das* v. *Vijayawada Municipality*[7], Umamaheswaram, J., expressed the view similar to the one we are inclined to accept. The learned judge said that the expression "any building" in section 87 (1) might be read as including any portion of a building and need not be construed as only meaning building in its entirety or as a whole. We agree with him that such a construction is not only natural on the plain language of section 105 but also accords with equity and commonsense. The learned judge, in support of the view, also referred to the fact that property tax is fixed on the annual value and the annual value is arrived at by taking into account the rent realised from the tenants and realisable in respect of the portion occupied by the owner, if let out. We hold, therefore, that vacancy remission is admissible for a portion of building as well which is provided as we said the other statutory requirements for remission are satisfied." In the same judgment it has been held rules 14 and 15 of the schedule IV of the Madras City Municipal Corporation Act is applicable in appeals before the Taxation Appeals Committee. Therefore in this scheme of allowing vacancy remission under section 105 of the

6. S.A. No. 918 of 1971 dated 4th January, 1974.

7. A.S. Nos. 122 and 123 of 1971 dated 27th February, 1973.

## ARE COSTS DECREED A DEBT UNDER TAMIL NADU ACT (X OF 1975).

*By*

T. R. VENKATARAMAN, B.COM., B.L.

The Debt Relief Acts are around the corner again. Tamil Nadu Government pioneered the field this year by passing Ordinance I of 1975 "to provide temporary relief to indebted agriculturists" by granting moratorium till 16th January, 1976. This Ordinance was subsequently replaced by Act X of 1975. Accordingly, the Act (and earlier the Ordinance) were intended to give some relief to indebted agriculturists. Subject to some provisions and Explanations, section 2 (*c*) defines 'debt' as "any sum of money which a person is liable to pay under a contract (express or implied) for consideration received and includes rent in cash or kind which a person is liable to pay or deliver in respect of the lawful use and occupation of agricultural land."

The Governor of Tamil Nadu was pleased to issue another Ordinance VIII of 1975, to grant similar benefits to non-agriculturists as well. This Ordinance however did not adopt the earlier Act verbatim. It varies from the Act X of 1975 significantly, particularly there is a great difference in the definition of 'debt'. Ordinance VIII of 1975 also with some provisos and explanations defines 'debt' in section 2 (1) as "any liability in cash or kind, whether secured or unsecured, due from an indebted person whether payable under *a decree or order of* a civil or revenue Court or otherwise, but does not include..........' Both the Act X of 1975 and Ordinance VIII of 1975 respectively provide for stay of proceedings in suits and executions in civil Courts, when one party is an agriculturist or a non-agriculturist. Hence one is led to believe under them all trials and executions involving agriculturist or non-agriculturist as the case may be has to be stayed. Under Act X of 1975 a debt arises under a contract. Under Ordinance X of 1975, a debt arises by order of Court also, apart from contract; the definition is wide under Ordinance VIII of 1975.

Now an interesting question that arises is whether costs granted to one party to the suit under section 35 or section 35-A of the Civil Procedure Code is within the definition of 'debt', and if so an execution has to be stayed? According to the Ordinance VIII of 1975 'debt' includes any liability payable under a decree or order of a Court or otherwise. Cost is an order of a Court and is in the nature of punishment to the losing party or compensation to the successful party[1]. The definition is so wide that it includes costs and hence an execution for costs also has to be stayed under Ordinance VIII of 1975. But Act X of 1975 gives a restricted meaning to the word 'debt' and as already seen it only means a liability under a contract.

Payment of costs under the Civil Procedure Code is an order of the Court in the nature of punishment to the losing party. The definition does not cover an order of Court. So, the execution for costs cannot be stayed under the Act. This legislative discrepancy has given rise to a peculiar situation where, while all proceedings against a non-agriculturist are stayed, an agriculturist-debtor may still be asked to pay the costs of a suit decreed against him.

This anomaly has to be set right by the Legislature.

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1. *Katragadda Rajabapayya v. Devineni Basawayya*, (1942) 2 M.L.J. 515: 55 L.W. 644 (2): 205 I.C. 326: A.I.R. 1942 Mad. 713.

## SECTION 5, LIMITATION ACT (XXXVI OF 1963) AND THE TAMIL NADU BUILDINGS LEASE AND RENT CONTROL ACT (XVIII OF 1960.)

*By*

T. S. SUBRAMANIA IYER, *Advocate, Tiruchy*-8.

At least in one particular *viz.*, the applicability of section 5 of the Limitation Act in the presentation of the appeals, in Rent Control cases great harm has been done to a number of tenants. That section 5 is inapplicable to Rent Control appeals, on account of the fact that the Appellate Authority or Tribunal is not a Court, but only a *persona designata* has in actual practice denied a very valuable right of appeal to tenants, especially as time for appeals prescribed is only 15 days (discriminatingly a shorter period than obtains in other cases of civil nature, adverted to by me at page 9, (1970) 1 M.L.J. (Journal section). The larger proportion of appeals coming up is generally only from tenants, against orders of eviction, fixation of fair rent, cases of restoration of amenities etc., because middle class and lower middle class people only are mostly tenants and require judicial assistance.

This being so, if on account of pardonable inadvertence by a lawyer or lawyer's clerk in the calculation of time for appeal, or real and genuine inability on the part of an appellant to come within the time of 15 days due to sudden serious ill-health of himself or his dear ones, or even a calamity such as the death of a dear one, the relentless law of limitaion of 15 days would completely block his right to appeal and he would have to put up with an order of the Rent Controller, irrespective of the merits of his case and suffer the consequences. All this, is so because the appeal is not before a Court, but to a *persona designata* (vide *S. Ganapathy* v. *N. Kumaraswami*[1]. Would it not be in the fitness of things that the hardship to the appellants in Rent Control cases be removed by amending the Act, by saying that the appeal shall lie to the Court of the Subordinate Judge in the muffasal and to the Court of the Small Causes in the metropolis and change the wording accordingly to make the law even and just with the other acts to invoke section 5 of the Limitation Act? Such an amendment would also help the landlords if they have genuine cases against recalcitrant tenants. I appeal to the authorities to cogitate on the matter and do the needful.

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1. (1975) 2 M.L.J. 171 : 1974 T.L.N.J. 380 : 88 L.W. 525.

## BOOK REVIEW.

I. SARKAR ON CRIMINAL PROCEDURE CODE: Fourth Edition by *Prabhas C. Sarkar* and *Kshitis C. Ray.* (Publishers : S. C. Sarkar & Sons P. Ltd., Calcutta-12), April, 1975. Price Rs. 90 : £ 6.25: $ 18.

After seventy-five years of existence, the Criminal Procedure Code of 1898 has been replaced by the Code of 1973 (Act II of 1974). The Present Code is marked by a number of refreshing changes in the procedural law. Foremost among them is the separation of the judiciary from the executive and a new set-up of criminal Courts manned by legally trained judicial magistrates under the control and supervision by the High Court. A genuine endeavour has been made to stop protracted police investigation. For the first time, period of limitation on a graded scale for prosecution of criminal offences punishable upto 3 years imprisonment is provided. Committal proceedings in sessions trials have been practically done away with. A novel and striking provision in the new Code is to permit the submission of written arguments by both-sides at the trial of cases (section 314). The bulk of the Code has also been brought down from 565 sections of the earlier Code to 484 sections in the new Code.

The book under review is a commentary on the provisions of the Code. The changes ushered in by the Code are presented accurately in their proper perspective. The annotations under each section are thorough and packed with information. References to English case law, wherever relevant, and generally decisions rendered up to the date of publication have been considered. Decisions under the old Code wherever helpful in understanding the provisions of the new Code have been freely cited. It is interesting to read a that woman is not a '*thing*' within the meaning of section 91 (2) and that production of a woman cannot be ordered under the section (p. 76) ; "in the Courts of law there cannot be a double standard—one for the highly placed and another for the rest" (p. 132); a girl earning by prostitution is "unable to maintain herself" within the meaning of section 125 as prostitution cannot be treated as a profession (p. 135); etc. The author's statement on p. 401 : " In serious crimes generally it is not safe to examine witnesses unless the defence advocate is sure that it is absolutely essential to establish a material point, *e.g., alibi,* or to offer an explanation on a point which he has a duty to meet. If it is at all thought necessary to examine witnesses the choice must be restricted to those only who can give some definite evidence eliminating the liability of the prisoner ", is sound and correct.

Practice points have been carefully noted and elucidated. The book under review is indispensable to every criminal lawyer and to Judges.

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II. MOGHA'S LAW OF PLEADINGS (WITH PRECEDENTS), Twelfth Edition. (Publishers: Eastern Law House Private Ltd., Calcutta), 1974. Price Rs. 45.

A knowledge of the science of pleading is an essential weapon in the armoury of a lawyer to achieve success in his profession and ignorance of it will be a daily impediment in his task. Plaints and written statements should be precise, concise, giving only the material facts, avoiding reckless or wrong statements and what smacks of evidence. Drafting of pleadings and other documents is indeed an art requiring a sound background of law. In fact it will be foolish to draft a pleading without a sure grasp of the law relating to the particular matter forming the subject of pleading. It is gratifying that instruction in this subject has been taken up as a part of the curriculum of studies in the law course. The monumental work of Bullen and Leake in England has set the standard and affords reliable guidance to the members, of the legal profession not only in England but elsewhere also. Mogha's book while drawing inspiration from the former has provided in the first 19 chapters a full discussion of the principles of pleading taking into account relevant case-law. This constitutes a most helpful and admirable feature of the book. That since its first edition in 1926 within half a century it has run into 12 editions testifies

to real appreciation by the Bar of its worth and utility and to its catering to a much felt need.

The book contains two parts. Part I presents the principles of pleading and Part II sets out the precedents. There are also two appendices, Appendix A being concerned with the writs of *habeas corpus, mandamus* or *prohibition, quo warranto* and *certiorari* and Appendix B setting out the form of election petitions with appropriate footnotes.

It may be suggested that on page 67 in the reference to adoption the impact of the Hindu Adoptions and Maintenance Act, 1956 as to formalities should be considered. Again the statement on page 397 as to conferment of jurisdiction on the High Courts by section 491 of the Criminal Procedure Code of 1898 may well be omitted since that section has been dropped in the Criminal Procedure Code of 1973 (Act II of 1974).

The exposition of the principles is lucid and practical correlating them to the concerned provisions of the Civil Procedure Code. The discussion on the distinction between particulars of a material fact and material fact itself in chapter VI is luminous and understandable. The book is sure to prove a boon to every legal practitioner.

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III. Law of Writs by V. G. Ramachandran, Second Edition, 1975. (Publishers : Eastern Book Company, Lucknow-226 001). Price Rs. 60.

The writ remedy nurtured on British soil and imported into this country during the days of British administration of India is in independent India perhaps the most popular type of judicial process. Assured to the citizens under Article 226 and 32 of the Constitution it makes a powerful appeal to the litigant public. A number of books have been written on the history, scope and usefulness of the different kinds of writs, not the least important of which is the book under review.

The book is divided into eleven chapters. Chapter I is devoted to General Aspects of Writs, Chapter II points out where Judicial Review is excluded. Chapters III to VII deal respectively with the writs of *certiorari, Prohibition,, mandamus, quo warranto* and *habeas corpus*. Chapter VIII considers the Role of Natural Justice in Judicial Review, Chapter IX deals with Delay-Laches and Chapter X examines the scope of writ remedies in High Court and Supreme Court. Chapter XI concerns Practice and Procedure. There are four Appendices setting out respectively (1) The need for application of Order 1, rule 8, Civil Procedure Code to writ proceedings, (2) Supreme Court Rules, 1966, (3) Rules framed by the different High Courts under Article 226 and (4) Forms.

One or two matters may be mentioned. The statement in the Preface that the "tendency appears to be to rivet the judicial eye on statistical disposals rather than giving substantial consideration to the pleas of the aggrieved petitioner", if well-founded, is saddening and disquieting. The question whether the Supreme Court will overrule its view expressed in *Kesavananda Bharati's case* that Parliament's amending powers cannot interfere with the "essential features" of the Constitution might have been framed in a simpler form instead of in the cryptic observation "the thousand dollars query is if the Supreme Court as now constituted will overrule the *Rights case* judgment" (p. 85). Since the Criminal Procedure Code of 1898 has been superseded by the Code of 1973 (Act II of 1974) it would be more helpful if references had been to the new provisions which, in quite a number of cases have modified or not re-enacted the old provisions.

The author has discussed the scope and sphere of operation of the different writs in the light of their history and the case law, English and Indian. The discussions are analytical and learned with an expression of the author's own view-point. The book is on the whole a welcome addition to the literature on the subject.

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IV. Narayanan on Trade Marks and passing off: (Publishers : Eastern Law, House P. Ltd. Calcutta). Second Edition, 1975. Price 150 : £ 14 : $ 33.

A trade mark is a symbol, usually, a picture, label or words applied to a trader's

goods distinguishing them from similar goods of other traders and enabling the public to associate and identify them as the goods of a particular trader. The mark need not be the result of inventive skill but may even be a commonplace thing. The mark is, however, regarded as property in the sense that on certain requirements being satisfied, whether the mark is registered or not, a person gets the right to the exclusive use of it in relation to particular goods. The function of a trade mark is to indicate the trade origin and hence use of it by one other than its proprietor tends to deception of the public. As observed by Graham, J., in the *G. E. case*, (1969) R.P.C. 418, the conditions of trade and the practices of the trading community are rapidly changing and the developments of science, and the application of technology to industry, the growth of great manufacturing and holding companies with a number of subsidiaries, the exchange of technical know-how on an international scale coupled with the constant changes, made in the presentation, packaging and methods of marketing are having their impact on the use and significance of trade-marks. The law of trade-marks is therefore steadily growing.

The law relating to trade-marks in India is now to be found in the Trade and Merchandise Marks Act, 1958. Some aspects of the law relating to unregistered trade-marks still depend on common law. Whereas the reputation of a business symbolised by its distinctive trade-mark is protected against piracy by what is known in common law as the "passing off" action, a trade-mark registered under the Act of 1958 is protected by the statute. The book under review deals with the law in thirty chapters each being concerned with a particular topic and related matters. The full texts of all the statutes Indian and English both repealed and unrepealed bearing on the subject of trade-marks are set out in the Appendix.

The author's exposition of each topic highlights all important aspects of it and is clear and informative. His treatment of the subject is eminently practical. Not only lawyers but also the commercial public will find it profitable to study the book. The section devoted to licensing of trade-marks in Chapter 20 as well as the chapters on property in trade-marks, deceptive similarlity and passing off are illuminating and well-written. The present edition of the book fully maintains the excellence of the first edition.

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V. NARAYANAN ON PATENT LAW. (Publishers: Eastern Law House (P.) Ltd. Calcutta), 1975. Price Rs. 180 : £ 15 $ 36.

Patent law stems out of the anxiety of Governments to secure disclosure of inventions to the public in return for the grant of a limited monopoly to the inventor. Thus patent systems operate not so much in the interests of the inventor as in the interests of national economy. It is only in regard to new inventions capable of industrial application that patents are granted. Necessarily therefore, patent constitutes a kind of industrial property and at the present time it has acquired international ramifications. The Patent Act of 1970 forms an important landmark in the history of patent law in India. Though modelled substantially on the English Patent Act of 1949, many features from the patent systems in vogue in other countries have been introduced into it after making necessary adaptations to suit requirements of this country.

In the book under review the author has dealt with the Indian law relating to patents in 20 chapters, topicwise, and not in the form of a running commentary, on the sections of the Patent Act. The texts of all important statutes, English and Indian, in addition to the texts of the Patent Act of 1970 and the Patent Rules of 1972 are given in the Appendix. What are patentable inventions, how to obtain a patent, specification, patents of additions, opposition to the grant of patent, transfer of patent rights, rights and obligations of a patentee, revocation and surrender of patents, infringement of patents and remedies therefor and other matters are exhaustively covered in a form easily understood by inventors and industrialists, law students, and patent lawyers taking into account

all important decisions of Courts, both in England and India.

It is interesting to be told that a patent cannot be taken out for a mere principle but it can be done when a principle is coupled with the mode of carrying the principle into effect, provided the concerned person had discovered the principle and had also invented the mode (p. 23), or that a patent mischievous to the State will not be granted (p. 29). The impression produced by a study of the instant book is that it has provided "so much information in so convenient a manner". The book is sure to serve as a dependable guide to all commercial men, lawyers, and others interested in patents and their exploitation.

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VI. Pal and Bose on West Bengal and Delhi Sales Tax Laws. (Publishers: Eastern Law House (P.) Ltd., Calcutta), 1975. Price Rs. 100 : £ 8:$ 20.

Over the years sales-tax has become a potent instrument for the States for augmenting their revenues. It is, in practice, proving itself into a veritable *Kamadhenu*. Inasmuch as the subject of sales-tax is within the competency of the States to legislate upon, a variety of legislation has been enacted by the different States adding to the complexities besetting the subject. This is also responsible for a plethora of decisions of Courts on questions relating to sales-tax not all of which could be reconciled. While Madras introduced in 1939 a multipoint system of levy, the Bengal Finance (Sales-tax) Act adopted in 1941 a single point system.

The book under notice has provided a sectionwise commentary on the Bengal Finance (Sales-tax) Act. This Act was almost textually adopted by Parliament for the Union Territory of Delhi. The authors have taken the Bengal Act and the judicial decisions interpreting its provisions as the basis for discussing the fundamental principles. The authors have done well to point out how the law relating to sales-tax is a synthetic subject, many of its concepts and the expressions used being derived from other branches of law like Contracts, Sale of goods, Partnership, Hire-Purchase, Companies Act, Income-tax etc. Though the authors are fully aware that the literary construction of the Act is the only safe rule (Preface, p. 7) the book opens with a chapter on Interpretation of Statute, in the course of which reference is made to the observation of the Supreme Court in *Mathura Prasad's case*. "If the law requires that a certain tax is to be collected, it cannot be given up, and any assurance that it would not be collected would not bind the State Government whenever it chooses to collect it. The principles underlying the various provisions are neatly analysed and stated with precision. The enunciations are clear and simple ; *e.g.*, "Once a notification has been made by the appropriate authority, it can never become inoperative through obsolescence or by an attempted disturbance of such state of affairs by a totally unconnected and different legislative body" ; "even tax authorities are bound by the rules of equity in matters of procedure". The book shows a very competent and exhaustive study of the law and is sure to be widely appreciated.

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VII. Law Relating to Accidents by H. P. Shrivastava in two volumes. (Publishers : The National Law House, Indore-452, 903). Vol. I published in 1974, Price Rs. 35 and Volume II published in 1975, Price Rs. 45.

Ordinarily the term "accident" signifies an unlooked for mishap or unforeseen event. All that people can be expected to guard against are only reasonable probabilities but not fantastic possibilities. Hence accidents happen now and then taking toll of lives or causing injuries to person or damage to property. Accidents may result from fast moving road transport, employment hazards and other causes. Non-observance of duty to take care, negligence, recklessness, breach of statutory duty, etc., may bring about accidents. The remedies available to the victim, assessment of damages and other matters are covered in part by common law and partly by statutes like the Fatal Accidents Act, the Workmen's Compensation Act, Motor Vehicles Act etc.

Volume I of the book under review is divided into four parts. Part I is devoted to accidents in general. Part II deals with the Fatal Accidents Act ; Part III covers motor accidents and Part IV discusses insurance and claims under the Motor Vehicles Act. Volume II also is laid in four parts. Negligence forms the subject of Part I; Hospital and medical accidents of Part II ; Railway accidents of Part III and Damages and compensation of Part IV. Each volume has been provided with a separate Index and Table of Cases.

A few suggestions for improvement are made. At places, the law is stated *a la mode* the digests (*e.g.*, Vol. I, para. 2, page 2) instead of in complete sentences. At ome places, sentences require to be properly stated or correctly, framed, (*e.g.*, A legislature can be given retrospective effect to a piece of legal passed by it—Vol. I, para. 10, page 25; the vehicle was not entitled to knock down a person who was at the water tap as the vehicle had no business to be so near the water tap—Vol. I, para. 1, page 123; the term 'damages' is used in context to a pecuniary recompense award for reparation of loss or injury due to wrongful act—Vol. I, para. 10, p. 113. the misfortunate occurred when the radiographer.....put on only a lint dressing which resulted in the burnt of the child's face causing permanent disfigurement—Vol. II, para. 2, page 79).

The decision of the Supreme Court in *Shyam Sunddr* v. *State of Rajasthan*, 76 P.L.R. 590 explaining the principal function of the doctrine of *res ipsa loquitor* seems to have escaped notice.

The coverage of topics is adequate and satisfactory. The exposition is helpful. Generally, all the leading English and Indian decisions seem to have been considered. The book is a desirable publication as setting out the principles of law relating to a field of which the average Indian is yet to take advantage.

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VIII. CHOPRA'S LAW RELATING TO GOVERNMENT SERVANTS, (Publishers: Eastern Law House (P.) Ltd., Calcutta), 1975. Price Rs. 40: £ 5 : $ 12.

Parliamentary system of Government implies that ministers are apt to change from time to time. A body of independent and permanent civil servants therefore becomes necessary to maintain continuity in administration. The elaborate provisions in Chapter XIV of the Indian Constitution concerning services under the Union and States Governments testify to the great importance attached to the civil service in this country. Article 310 enunciates the doctrine of pleasure and Article 311 acts as a rider or limitation of that doctrine so as to ensure normal security of tenure to a civil servant. The scope of the protection afforded and the operation of the safeguards provided have given rise to a multiplicity of decisions.

The main objective of Mr. Chopra's book is to elucidate the law affecting Government servants under the Constitution. There is much to be said for Mr. Chopra's observation: "The mass of rules, by-laws, regulations, Government regulations would require a computer to handle them" (Preface).

Mr. Chopra has discussed the law relating to Government servants in 6 Chapters. Chapter I adverts generally to the constitutional position of the civil servants; Chapter II considers the Right to Equality and the Government servant; Chapter III deals with civil servants and fundamental freedoms; Chapter IV with Recruitment and Conditions of Service of Government servants; Chapter V discusses the doctrine of pleasure; and Chapter VI Security of Service. Appendices are attached setting out *inter alia* the All India Services Act, 1951; Central Services (Classification, Control and Appeal) Rules, 1965; All India Services (Conduct) Rules, 1968, etc.

The author's examination of the law with reference to the statutory provisions, rules and regulations, etc., and the judicial decisions is careful and thorough. His comments on the decision of the Supreme Court in *Royappa's case*, A.I.R. 1974 S.C. 555 are sound and penetrating. The book under notice is a welcome addition to the literature on the subject.

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IX. JUDICIAL REVIEW OF LEGISLATION by *V.S. Deshpande*, Judge, High Court of Delhi. (Publishers: Eastern Book Company, Lucknow-226 001), 1975. Price Rs. 40: £ 4 : $ 10.

Judicial review of legislation is a feature of federal constitutions. The scope of such review turns on the constitutional provisions. The Indian Constitution being by and large federal than anything else and with a bill of rights written into it carries the power of judicial review. The amplitude of the power has become the subject of controversy since the decision of the Supreme Court in *Golaknath case* (subsequently overruled in *Kesavananda Bharati's case* and further considered in *Mrs. Gandhi's Election Case* and other cases).

In the book under review Justice Deshpande considers the subject of, judicial review of legislation in six chapters. The First chapter examines the meaning and different kinds of review; the second discusses the base and grounds of review; the third explains the nature of review; the fourth deals with the partial invalidity of statutes; the fifth is devoted to unconstitutionality and its cure, and, the last concludes with justification of review.

The views of the author are reflected in the Introduction itself. According to him, the real basis of judicial review of legislation lies in Articles 372 (1) and 245 (1) of the Constitution and for this purpose Article 13 is wholly expendable; that so looked at no question of attacking the validity of a constitutional amendment could arise at all, unless of course compliance with the procedure of Article 368 is in dispute; and, the real place of Article 13 in the Constitution is not to provide the source or basis of the power of review but rather to regulate the manner of the exercise of that power. The author's thesis is attractive albeit debatable. It is also the author's thesis that Article 368 is not merely procedural. He distinguishes between *procedural judicial review vis-a-vis* a Constitution amendment and *substantial judicial review* which goes to the very competence of Parliament to amend the Constitution. According to him, the former type of review is permissible but not the latter. The author follows it up by stating that even on the assumption that the sovereignty of a constituent body cannot be absolute the control has to come only from the people or their representatives who made the Constitution and not by the Court. It is not possible to trace the various arguments of the author by which he reached these conclusions in this short review. This much may be accepted, *viz.*, that his reasoning rests on valuable material.

The opinions expressed by the author are interesting and provide food for careful thought. The book is an able and scholarly presentation of the author's view-point. Incidentally it shows how constitutional law like other mortal contrivances has to take some chances.

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X. INTERPRETATION OF STATUTES by *Vepa P. Sarathy*. (Publishers: Eastern Book Company, Lucknow-226 001), 1975. Price Rs. 40.

Interpretation is often an exasperating process. Its roots lie in the intricacies of language. When Alice in Wonderland asked Humpty Dumpty whether words can be made to mean so many things, pat came his answer "It all depends on who is the master". Judicial interpretation likewise depends on the individual Judge; but in course of time quite a number of norms have been recognised and they afford useful guidelines. Today legislative output in India is terrific and the rules and notifications issued thereunder are often baffling. The judgment of a Court in the litigation before it turns very often on the proper interpretation of a statute or series of statutes. In this task the Court resorts to the principles of interpretation which have become crystallised over the years through wide acceptance and application. But inasmuch as the legislature when making laws does not always act according to these norms new principles fall to be evolved adding to the already existing principles.

In the present book, the author has dealt with the subject under 12 Chapters. Chapter I contains the Introduction. Chapter II states the General Rules of construction. Chapter III is devoted to Presumptions. Chapter IV deals with

Internal Aids; Chapter V with External Aids; Chapter VI considers the Retrospective Effect of Statutes; and Chapter VII Repeals and Temporary Statutes; Chapter VIII covers Taxing Statutes; Chapter IX Penal and Remedial Statutes and Chapter X Delegated Legislation; Chapter XI discusses Interpretation of the Constitution and Chapter XII deals with Miscellaneous Matters. There are 3 Appendices. Appendix I sets out the latest case-law and Appendix II the text of the General Clauses Act, 1897. Appendix III gives a list of Latin maxims and their English equivalents.

Chapter I, the Introduction, is brilliant. The author refers to three methods of interpretation: (i) the *literal method of interpretation* vivified by Shakespeare in the Merchant of Venice; (ii) the *mischief method* under which in interpreting a statute the Court inquires as to what lacuna or mischief the earlier law had not dealt with and the statute seeks to remedy. It is apropos of this that the author has formulated 10 rules of interpretation, clear and comprehensive, and to which he often refers, particularly in the chapter dealing with the interpretation of the Constitution; (iii) the last of the methods of interpretation referred by the author is the *modifying method* laid down by Lord Wensleydale in *Grey* v. *Pearson*, (1857) 6 H.L.C. 67, where he observed: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to an absurdity or some repugnancy or inconsistency with the rest of the instrument, in which case, the grammatical and ordinary sense of the words may be modified so as to avoid such absurdity, repugnancy or inconsistency".

On the question of the scope of Parliament's power of amending the Constitution the author states that the power is absolute without any limits on it; but Parliament should not however take away the power of Courts to strike down *ordinary* legislation as tested against the amended Constitution. There is much to commend this view.

The author's approach to the subject and its treatment are refreshingly original. The book is eminently readable and will prove helpful to academicians, lawyers and Judges.



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XI. SENTENCING BY COURTS IN INDIA by *G.N. Sabhahit*. (Publishers: Dixit Publications, Bangalore-3). First Edition, 1975. Price Rs. 40: £ 4.

According to the Japanese Penal Code, the aim of punishment is the end of punishment. As Lord Denning once observed: "The ultimate justification of any punishment is not that it is deterrent but that it is an emphatic denunciation by the community of a crime". The policy of the Indian Criminal Law is to fix a maximum penalty for an offence the same being intended for the most heinous crimes leaving a wide discretion in the Judge in awarding punishment. This stems from the practical impossibility of laying down standards. But the hunch system for the determination of the judicial sentences has been regarded by many as one of the weakest points in the administration of the criminal law. Nor can we feed into a judicial computer all the situations in which a crime may be committed, to get at the right sentence to be passed. Guidelines may be set but they can in no sense be decisive. There is no doubt that we are still attuned to the crime-oriented pattern of punishment and have not moved into the correction-oriented methods of sentence. Nor is there any dichotomy of a criminal trial into guilt-finding and sentencing stages as in the United States of America. The question of sentence really requires a working compromise between competing views based on the reformative, deterrent and retributive theories of punishment. Modern penology looks upon crime and the criminal as equally material when the right sentence is to be picked out. There is neither any comprehensive provision nor any adequate machinery in the Criminal Procedure Code for the collection and presentation of the personal data of a culprit. Almost the only provision bearing on the matter is section 235 of the Criminal Procedure Code, 1973, which enjoins the hearing of the accused on the question of sentence, but this is at the post-conviction stage.

The book under review is a monograph on sentencing. It is built mainly on the foundation of case law. The subject is covered in 19 chapters. Chapter I is a Prolegomena. Chapter II considers the several Theories of Punishment. Chapter III is devoted to Punishment and Forum; Chs. IV to VI to the Sentencing Process; Chapter VII to Habitual Offenders and Recidivism; Chapters VIII and IX to the Sentencing Pattern in the Tariff System; Chapter X to Constructive liability and Sentencing the Co-accused; Chapter XI to Non-custodial Punitive Measures; Chapter XII to Compensation to Victims of Offences; Chapter XIII to Forfeiture of Property; Chapter XIV to Externment; Ch. XV to Public Censure; Chapter XVI to Capital Punishment; Chapter XVII to Imprisonment; Chapter XVIII to the Attitude of Magistracy, Prosecutors and Defence counsel. Chapter XIX puts up a plea for Research. There are three Appendices, Appendix I covering the Judicial Officers' Training Institute, Nagpur, Appendix II citing certain Forms and Appendix III mentioning the States covered by the Probation of Offenders Act as on 1st October, 1973.

The author has made use of a wealth of materials relevant to the subject, including observations of criminologists, academicians, and jurists. The study is incisive as well as informative. Attention is pinpointed on matters like the impact of the concept of welfare state, sentences to be awarded in the case of socio-economic offences, white collar crimes, changed outlook in regard to punishments etc. The book is about the first of its kind in this country on the subject of sentencing and deserves more than a meed of price. The book may be studied with profit by the magistracy, the police and the members of the legal profession.

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XII. M.P. Shrivastava's Law relating to Prevention of Food Adulteration in India, Third Edition, 1975 September. (Publishers: The National Law House, Indore-452 003). Price Rs. 65.

Adulteration of food is a menace to public health. It is a grave and deadly anti-social offence. Food adulterator is one of the public enemies No. 1. There is increasing recognition that the offenders should be awarded condign punishment. In the words of a learned Judge, the offenders must be made to realise that the moving finger writes and having writ moves on, and the message is "thy days are numbered" (See *State of Gujarat* v. *N.D. Patel*, 15 Guj. L.R. 736).

The book under notice furnishes a section-wise commentary on the provisions of the Prevention of Food Adulteration Act, 1954. The rules framed under the Act by the Central (1955) as well as those framed by 15 of the States are also given. Apropos of the author's plea in the Preface that "the severer is the punishment imposed by law, the wider should be the scope of defence and more liberal should be the use of the benefit of doubt", it is useful to recall the observations of the Supreme Court in another context in a recent case: "The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence...... demands especial emphasis in the context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt......should not be stretched to embrace every hunch, hesitancy and degree of doubt....Only reasonable doubts belong to the accused". The annotation of the sections is fairly satisfactory and the case law cited is on the whole representative. The book will appeal to tradesmen as well as lawyers.

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XIII. Freedom of Religion and the Indian Judiciary by *Dr. V.M. Bachal*, April, 1975. (Publishers: Shubhada Saraswat, Poona-441 005). Price Rs. 72: £ 5. $ 12.50.

The Preamble to the Constitution proclaims that the Constitution is designed *inter alia* to secure to every citizen liberty of thought, expression, belief, faith and worship. Article 25 guarantees the freedom of conscience to every person and the free profession, practice and propagation of religion. Article 26 assures to every religious denomination or a section

of it a right to manage its own affairs in matters of religion and to maintain institutions for religious purposes. These rights are subject to restrictions on grounds of public order, morality and health. Articles 27 and 28 express the secular character of the State by securing to every person freedom from the payment of taxes for the promotion of any religion and freedom from attendance at religious institution or religious worship in certain educational institutions. Further Article 29 (2) protects against denial of admission to an educational institution on the ground only of religion. The scope of the rights guaranteed and the restrictions that can be imposed have been considered by the Supreme Court and the High Courts in a number of decisions.

The book under notice is an adaptation of the author's thesis for the degree of Ph. D. It purports to be a critical study of the judicial decisions from 26th January, 1950 to 26th January, 1975. The book deals with the subject in 14 chapters. Chapter 1 is Introduction; Chapter 2 considers Secularism; Chapter 3 Fundamental Rights and Judicial Review; Chapter 4 Meaning and Matters of Religion and Chapter 5 Definition of 'Hindu'; Chapters 6 to 9 deal with Hindu Religious and Charitable Endowments and Chapter 10 with Muslim Religious Endowments; Chapter 11 is devoted to Religion and State Taxation; Chapter 12 to Religious Non-discrimination; Chapter 13 to Religious Minorities and Chapter 14 to Conclusions. There are 6 Appendices. These relate to Definition of Hindu; Religious Endowments; Religion and State Taxation; Religious Non-discrimination; Religious Minorities and the Aligarh Muslim University Amendment Legislation, 1972, respectively.

On page 89 it is stated that "by making matters of religion a justiciable issue, the judiciary has limited considerably the autonomy of religious institutional life". This kind of judicial approach is inevitable for, "the heads of religious purposes determined by belief in acquiring religious merit cannot be allowed to be widely enlarged consistently with public policy and the needs of modern society" (*Saraswathi Ammal* v. *Rajagopal Ammal*, A.I.R. 1953 S.C. 491. As to the author's observation (page 49) on the effect of the decisions of the Supreme Court on constitutional issues: "One of the most weighty reasons that presents adequate resource for the adverse criticism is the dissenting opinions of the Supreme Court itself"; it is useful to recall what Holmes said: "A dissent in a Court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting Judge believes the Court to have been betrayed".

The author's conclusion (page 304): "The Constitution has constituted the judiciary as the custodian or guardian of the freedom of religion embodied in the fundamental rights and the judiciary has performed this sacred task by its unceasing vigilance faithfully and fearlessly. This is the encouraging performance of the Indian judiciary in the context of functional jurisprudence as applied to the philosophy of positive secularism" is a merited tribute.

The book is a scholarly study in depth of the subject "Freedom of religion and the Indian Judiciary". The exposition is marked by clarity and sobriety. It is a welcome addition to the literature on the subject.

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XIV. Readings in Uniform Civil Code. Edited by *Narmada Khodia*. (Publishers: Thacker & Co., Ltd., Bombay-400022), 1975. Price Rs. 50.

Article 44 of the Directive Principles of State Policy lays down that "The State shall endeavour to secure for the citizens a uniform civil Code throughout the territory of India". The implementation of this directive has come to assume political significance. The movement towards a uniform civil Code has been bogged down under opposition from orthodox Hindus and Muslims and hence notwithstanding the fact that the Constitution has been in operation for more than twenty-five years no headway has been made in the matter. So long as the spirit of "Indianness" has not developed in the average citizen

and he persists in thinking in terms of his being a Hindu or a Muslim all the time and for every purpose', a uniform civil Code can be only a "dream image". What seems to count is not what the intellectual elite of any community thinks on the matter but what the masses are led to believe by the rabble-rousers and religious fanatics.

The book under notice contains a number of scholarly and highly analytical articles on various aspects of the problem and on the steps that could be taken to achieve a uniform civil Code for the country. For instance, a former Chief Justice of the Calcutta High Court, Dr. P.B. Mukharji, would "even suggest Article 44..be transferred from the Directive Principles of State Policy to the Fundamental Rights in Part III of the Constitution with suitable variation if the Article is to achieve its purpose" (page 9). Dr. Derrett who finds India to be a "madhouse of personal laws" suggests a two-tier or two-decker system which would rely on a fundamental universal system, of which all citizens would be presumed to avail themselves, and which will govern them unless they take steps to the contrary (page 32). A way out from the present impasse seems to be indicated through what is spoken of as "permissive legislation". A common civil Code regulating marriages, family relationships, inheritance and succession and other suitable topics may be framed permitting all those who want to do so to take advantage of the provisions of the Code without suffering any of the penalties that divergence from the personal laws may attract. Those who want a more progressive life may elect to live under the Code leaving those who want to live under their personal laws to do so.

The book is a valuable contribution pinpointing attention to the obstacles to be overcome and the causes therefor, the desirability of pursuing a policy of *festina lente* and undertaking legislation progressively starting with the least controversial matters, in the manner for instance, of the Adoption Bill of 1972.

XV. DAYA-VIBHAGA by *I.S. Pawate*, Second Edition, 1975. (Publishers: Registrar, Karnatak University, Dharwar). Price Rs. 20: 35sh. : $ 5.

Vijnaneswara has been described as the great Gamaliel sitting at whose feet all the later jurists lisped their law. His monumental work the Mitakshara has propounded a theory of ownership, unique and arresting—the theory of right by birth (*janmanaiva svatva*). Division of heritage is permeated by this principle. In the book under review the author maintains the thesis that according to Vijnaneswara *svatva* or property is *laukika* or secular; that the Smritis had no hand in the making of the laws of property; that Vijnanaeswara in what he wrote reaffirmed the pre-Aryan, pre-Smriti nature of property; that under the Mitakshara law all the heirs get property by birth or relationship to the owner; that the term 'birth' apart from physical birth meant also entering into a relation by one person with another which caused *sapindaship* in the widest sense of the term between the two persons (*e.g.*, when a man married, he is "born" as a husband and the woman is "born" as a wife); that the relatives of an individual owner are owners of his property along with him, but their rights cannot prevail against the rights of the individual owner on account of *pratibandhas* in the shape of superior rights of others; that there were not two modes of devolution of property, namely, survivorship and succession, but that there was only one mode which was essentially the same for all heirs; and that "vibhaga" means both partition and inheritance.

In reaching these conclusions, the author has subjected the Texts to a daring and critical study. Whether one accepts all his conclusions or not, there is no doubt that his analysis of the leading concepts brilliantly highlights the evolution of Hindu juristic thought.

XVI. THE HINDU SUCCESSION ACT, 1956 by *D.H. Chaudhari* and *A.D. Chaudhari*, Fourth Edition, 1975. (Publishers : N.R. Bhalerao, Law Book-sellers and Publishers, Poona-30). Price Rs. 50.

The Hindu Succession Act, XXX of 1956, has now been in operation for nearly two decades. It will be helpful as well as valuable to know the impact of its provisions on Hindu social life and the extent to which they have realised the high social objectives like giving equal rights to a daughter or freedom to dispose by will one's undivided interest in joint family property, etc.

The instant book is a study of a different kind. It gives a sectionwise commentary on the provisions of the Act. The annotation follows the case-law which has been taken into account fully. On page 24 it is noted *inter alia* that the rule of preference based on propinquity of blood has been discarded by the Act. This is putting it rather too high. In section 12 dealing with the order of succession *inter se* between agnates or cognates the principle of propinquity is recognised. The author himself states in his comment that one of the considerations underlying the scheme of distribution is "nearness of relationship". The book will serve as a dependable guide to a proper understanding of the provisions of the Hindu Succession Act.

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XVII. FORGERIES, CHEATING, COUNTERFEIT TRADE MARKS AND CRIMINAL LIABILITY by *S.K. Ghosh*, 1975. (Publishers: Delhi Law House-110006). Price Rs. 33.

The rapid expansion of trade and commerce and *pari passu* with it the growth of banking institutions and credit facilities have brought in their wake large-scale practice of offences like forgery, cheating and counterfeiting of trade marks. The ramifications of these offences and the forms they may take are considerable. It becomes necessary therefore for companies, banks, commercial bodies and men to have a clear idea of these offences and the forms they may take.

The book under notice has dealt with the subject fairly exhaustively under suitable headings in the light of decided cases. The Supreme Court decision in *Sumat Prasad Jain's case*, A.I.R. 1972 S.C. 2488, as to what should be proved to succeed on the charges under sections 482 and 486, Penal Code; and, that in *Molar* v. *State of Haryana*, (1973) 2 S.C.C. 430 holding that making false identification by a lambardar and inducing registration of a document amounted to an offence under section 467 could have been noticed. The book is a welcome publication.

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XVIII. LAW OF MUNICIPAL ELECTIONS IN INDIA by *A.S. Deshpande*, First Edition, 1970. (Publishers: N.R. Bhalerao, Law Book-sellers and Publishers, Poona-30). Price Rs. 35.

In India each State has its own independent legislation concerning municipalities and sometimes multiple enactments governing different types of municipal bodies. Notwithstanding the diversity in the provisions of the different municipal Acts many common principles form their substratum, for instance, election on the basis of adult franchise.

In the present book the author has endeavoured to present the provisions relating to elections to municipalities with a critical commentary referring to decided cases. The book is divided into two parts. The first part runs into 11 chapters. Chapter 1 is Introductory; Chapter 2 deals with Elections and Electoral right; Chapter 3 with Preliminaries before holding an election; Chapter 4 with the Elector and the Electoral Roll; Chapter 5 with the Candidate and Chapter 6 with Nomination of Candidates; Chapter 7 is captioned From Nomination to Poll; Chapter 8 is devoted to Counting of Votes and Declaration of Results; Chapter 9 to Election Disputes; Chapter 10 to Grounds for Challenging Elections and Chapter 11 to Writs in Election matters. The second part of the book contains 22 Appendices giving the relevant provisions of the municipal statutes and the Rules framed thereunder.

There are many other municipal Acts besides those referred in the Schedule such as the Assam Municipal Act, 1957;

the Himachal Pradesh Municipal Act, 1969; Orissa Municipal Act, 1950 etc. Being a publication of 1970, decisions of the Supreme Court rendered later, like *Rajbali Singh* v. *Shyamlal*, A.I.R. 1973 S.C. 276, holding that when once the number of the ward is mentioned in the nomination paper, the identification of the constituency is complete and that if a nomination is accepted by the returning officer the presumption is that the nomination is a valid nomination and it is for the party who challenges its validity to establish his plea that there was no substantial compliance with law, could not find mention.

The author has stated the law in a highly intelligble and lucid manner and the book makes interesting reading throughout.

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XIX. COMMENTARY ON THE MERCHANT SHIPPING ACT, 1958, VOL. I by *A.B. Gandhi*, First Edition, April, 1975. (Publishers: Milan Law Publishers, Bombay-400008). Price Rs. 45 : £ 4.00.

Merchant shipping has become an international industry. The operational aspect of shipping tonnage is regulated by international law and convention. The law governing merchant shipping is a banch of the maritime law. India has now a more than respectable tonnage of merchant shipping. The Merchant Shipping Act of 1958 as amended from time to time to give effect to International Convention of Life at Sea, 1960, International Convention for the Prevention of Pollution at Sea by Oil, 1954, International Convention on Limitation of Owners of Sea-going Ships, 1957, and the International Convention on Load Lines, 1966, provides the law relating to merchant shipping in India.

The book under review provides a sectionwise commentary up to Part VII of the Act comprising sections 1 to 218. The annotations are helpful. Case-law, English and Indian, up to date has been taken into account. The book will be useful to all those connected with the shipping industry as well as to lawyers.

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XX. DIGEST OF BOMBAY RENT CONTROL CASES, 1960-1974 by *Jagdish B. Soni*, Third Edition, 1974. (Publishers: Gujarat Law Reporter Office, Ahmedabad-380001). Price Rs. 15.

With the migration of large bodies of people from the rural to the urban belts in search of employment in companies, industries and factories the problem of accommodation has become acute. The consequent spiralling rise in rents has become phenomenal. Rent Control and allied legislation have given rise to a plethora of decisions. The booklet under notice gives a digest of the Bombay Rent Control Cases reported in the Gujarat Law Reporter and the Gujarat Law Times during the period 1960 to 1974. It contains an Index with 15 headings as well as a subject index. The digesting of the decisions is neat and compact. The booklet will be of much assistance to lawyers and to those concerned with or interested in rent control problems.

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XXI. OUTLINES OF MERCANTILE LAW by *C. R. Sivaramakrishnan* and *S. Pandian*, First Edition, 1975. Price Rs. 15. (Copies can be had from C. R. Sivaramakrishnan, 29, Beasant Road, Madurai-2).

In Chapters I to XII the present book deals with the Principles of General Contracts, and Chapters XIII to XXII are devoted to Special Contracts covering Indemnity and Guarantee, Bailments and Pledges, Agency, Partnership, Negotiable Instruments, Sale of Goods, Marine Insurance, Fire Insurance, Arbitration and Companies Act, sections 1 to 398. According to some, mercantile law comprehends the law relating to carriers also.

The book is intended primarily to serve the needs of law students and students of the commerce courses. The principles are stated with lucidity and in a simple and easily understandable manner. The indication of topics as of 'great importance' 'greater importance' and 'greatest importance' through the use of asterisk marks, though somewhat helpful to examination-going students may not be acceptable as a proper assesment of the

relative importance of the topics, as opinions are bound to vary. Quasi-contracts are 'implied' contracts in a loose sense only inasmuch as the former are not based on intention inferable from facts but are constructed by law *ex debito justitiae*. It is a happy feature of the book that the citation of decisions is not overdone. The book should prove helpful to students.

XXII. BANKER AND CORPORATE CUSTOMER by *R. K. Talwar*. (Publishers : The A. D. Shroff Memorial Trust, Bombay-400001). 1974.

This booklet of 18 pages sets out the address by the author under the A. D. Shroff Memorial Trust for the year 1974. The banker and corporate customer relationship is one of the facets of banking. The soundness of a banking system is reflected in its ability to meet a given situation. In the fast changing economic conditions industrial borrowers have to reconcile themselves to the existing socio-economic priorities, should realise that bank credit is no substitute for capital, that professionalisation of top-management and divorce of such management from ownership are inevitable, that the end-use of funds has assumed new importance and that in developing the new pattern of relationship with the corporate customer the banker will ensure not only the safety of his funds but will also fulfil his social responsibility to set aside an increasing portion of available credit for priority sectors and weaker sectors of society and to see that so far as the larger houses are concerned that no more than the clearly established minimum needs are sought to be met.

The author's exposition is characterised by a pragmatic approach and makes stimulating reading. The talk gives a vivid picture of the emerging trends in the banker corporate sector relationship.

XXIII. THE COMPULSORY DEPOSIT SCHEMES ACTS by *C. C. Anajwala*, 1975. (Publishers : Jamnadas & Co., Bombay: 400002). Price Rs. 20.

The instant book provides commentaries on a trilogy of anti-inflationary laws. They are the Additional Emoluments (Compulsory Deposits) Act, 1974 ; the Compulsory Deposits Scheme (Income-tax Payers) Act, 1974 and the Companies (Temporary Restrictions on Dividends) Act 1974. These Acts represent one of the determined and drastic measures taken by the Central Government to control inflationary forces which have rudely upset the country's economy. They impose restrictions on the expansion of money-supply and curbs on the increase in disposable incomes. They concern employers, employees, tax-payers, dividend-paying companies and shareholders. Furthermore failure to comply with their provisions entails penalties despite the absence of *mens rea*. It becomes necessary in the circumstances to acquire a more than nodding acquaintance with the salient features of these Acts and their implications.

The present book provides intelligible commentaries on the provisions of the three Acts. In addition to the texts of the Acts, the Schemes and Rules framed under the Acts are also given. The full texts of the earlier Ordinances as well are set out. The annotations are clear. The book will be helpful to all who have anything to do either with the enforcement of or compliance with the provisions of the Acts.

XXIV. GHOSH'S CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974. (Publishers: Eastern Law House, Calcutta 700013), 1975. Price Rs. 30: £ 3 : $ 7.

Smuggling and foreign exchange racketing play havoc with a country's economy. In India they have assumed the proportions of a monolithic business. The Tek Chand Commission observed that "smuggling has grown into such a vast network with such wide and far-flung ramifications that it called for drastic remedies." Measures taken from time to time to check such activities have not been successful for one reason or other. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 represents the latest attempt to tackle the evil. The Act contains 14 sections,

The book under review consists of 6 segments. The first contains a sectionwise commentary of the Act; The second deals with the Presidential Orders suspending the fundamental rights; The third contains Reported Judicial Decisions; The fourth is devoted to Preventive Detention in selected foreign countries; The fifth considers the impact of administrative lapses on national economy and the sixth the Role of Lawyers for the protection of individual freedom. There are also an epilogue giving the author's reflections and 4 appendices.

In his discussions and commentaries the author expresses the feeling that if smuggling and foreign exchange racketing activities have assumed the present proportions, it is not because of the inadequacy of the laws but due to inefficiency and corruption in the administrative machinery; that the measures now taken trench upon civil rights ; and, that the proclamation of emergency which, according to the author has doubtful legal validity is being freely used. Whether his views are acceptable or not, one cannot but accept that they have been presented skilfully and frankly. The book provides much food for thought.

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XXV. THE LAW OF EMERGENCY AND SECURITY, (WITH SPECIAL REFERENCE TO THE MAINTENANCE OF INTERNAL SECURITY ACT, 1971; AND THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974. By *Mahableshwar N. Morie*, 1975. (Publishers: Pradnya Prakasan, 23 Hamain Street, Fort, Bombay). Price Rs. 50.

At the present time we are passing through a period of complex and kaleidoscopic struggle between the forces of law and order and the criminal and antinational forces ; and between executive power and individual liberty. The declaration of emergency has brought into sharp focus the felt necessities of a vigilant and modern State and its security. While the causes leading to the present situation resulting in the emergency are the subject of some controversy there can be no denying the need for adoption of appropriate measures and the concern of all should be to see that the spirit of liberty survives the emergency.

The book under notice is divided into 3 parts. Part I deals in detail with the Maintenance of Internal Securities Act, 1971, and the Emergency Ordinance in the context of constitutional provisions. Part II contains the provision relating to the Conservation of Foreign Exchange and Prevention of Smuggling Actvities Act, 1974. Part III gives the relevant Acts, Orders and Ordinances for ready reference. A separate supplement to the book provides the Ordinances, Orders Bills, etc., issued in the months of June and July, 1975.

Various questions as to the legality of the several enactments listed above and their provisions independently of any question about the validity of the very proclamation of emergency the privileges claimed by the detaining authority under the Acts and Ordinances and the tenability of the orders made or issued thereunder may fall to be examined eventually. Without proper guidance one is apt to get bewildered by these fast-changing Laws and Ordinances. The present book gives such guidance. The author has examined the provisions of the concerned Acts in a totally detached manner. His comments are balanced. Full note has been taken of relevant judicial decisions.

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# A CRITICAL NOTE ON SECTION 110-AA OF THE MOTOR VEHICLES ACT (IV OF 1939) AS AMENDED BY CENTRAL ACT LVI OF 1969.

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Section 110-AA of the Motor Vehicles Act is a new addition in the Central Amendment Act LVI of 1969. It enables a person to prefer a claim either before the Tribunal constituted under the Workmen's Compensation Act, 1923, or before the Tribunal constituted under the Motor Vehicles Act, 1939, provided the death or bodily injury gives rise to a cause of action under both these Acts. The section reads as follows :—110-AA. "Notwithstanding anything contained in the Workmen's Compensation Act, 1923, where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may claim such compensation under either of those acts, but not under both." Before the insertion of this section, a workman who sustained injury in the course of employment or his legal representatives in case of his death in the course of the employment arising out of an accident involving a motor vehicle could prefer the claim under the provisions of Workmen's Compensation Act, 1923 and also under the Motor Vehicles Act of 1939, as there was no prohibition under both these Acts. Now this section prevents a person from taking action under both these acts on the same cause of action.

Section 3 of the Workmen's Compensation Act, provides for the grant of compensation for the death of or bodily injury to any person who is a workman as per the definition of that Act. Section 3 of the Workmen's Compensation Act reads as follows :—3 (1) If a personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter.

Provided that the employer shall not be so liable .......... (the proviso is not necessary for our discussion and hence it is not reproduced here). This section makes the employer absolutely liable to pay compensation to a workman provided the following three conditions are satisfied :—

(*a*) He should be a workman as per the definition of the Act. (*b*) He should be under his employment at the time of the accident, and (*c*) the accident should occur in the course of employment.

To attract the provision of section 110-AA of the Motor Vehicles Act the applicant or his legal representatives should have the right to apply under both these Acts. Therefore it goes without saying that the person sustaining the injury or meeting his death due to the accident must be a workman under the Workmen's Compensation Act and the accident should have happened involving a motor vehicle. In the absence of either of these, he will have his right only under the provisions of one of these two enactments

Section 110-AA of the Motor Vehicles Act debars a person in case of injury to him or his legal representatives in case of death arising out of an accident, from making any claim under the Workmen's Compensation Act, if the option under this section is exercised and the claim is preferred before the Motor Accidents Claims Tribunal. Virtually, this section takes away the absolute right given to a

workman under the Workmen's Compensation Act and prevents him from getting compensation in a more easy manner.

The nature of enquiry, the forum of enquiry, the points to be agitated and proved and the parties to the action are different under both the set-ups.

Only in the following four kinds of cases a claim could be made under both these Acts. (*i*) *A*, an employee of *B*, while acting as a driver and in the course of the employment sustains an injury or meets with his death in an accident caused by his own negligent act. (*ii*) *A*, an employee of *B*, travels in the car of *B*, driven by driver *X*, and in the course of the employment, sustains injury or meets with his death in an accident caused due to the negligence of the driver *X*. (*iii*) *A*, an employee of *B*, while driving his car and in the course of the employment sustains injury or meets with his death in an accident caused due to collision of his car with another car driven by driver *X*. (*iv*) *A*, an employee of *B*, while in the course of the employment sustains injury or meets with his death being knocked down by a motor vehicle driven by driver *X*.

In the last two cases *A* or his legal representatives as the case may be, may prefer the claim under the Workmen's Compensation Act and without any difficulty and without going to the question as to whether he was rash or negligent or the driver *X* was rash or negligent, get the compensation amount as per Schedule IV of Workmen's Compensation Act according to the quantum of salary. For example, if *A* gets a monthly salary of Rs. 400, under Schedule IV, in the case of permanent disablement he gets a compensation of Rs. 12,600 as a matter of right and in case of his death his legal representatives will get Rs. 9,000.

If a claim is preferred before the Motor Accidents Claims Tribunal either by *A* for his personal injury or by his legal representatives for his death as the case may be, it has to be clearly proved that the driver *X* was solely and exclusively responsible for the accident due to his rash or negligent driving. If it is proved, the compensation amount will depend upon so many factors like the age of *A*, his status, his physical condition and so on. The amount that may be awarded is uncertain and unlimited and not like the fixed one contemplated under Schedule IV of Workmen's Compensation Act. It may be even less or more.

As already stated when a claim is made before the Motor Accidents Claims Tribunal by *A*, having opted to do so he loses his right under the Workmen's Compensation Act. To get a claim in the Motor Accidents Claims Tribunal, rashness or negligence of driver *X* has to be proved, and driver *X* has the right to put up a defence of contributory negligence on the part of *A*. The difficulties will be more so in cases when the claim is made by the legal representatives of *A* over his death.

To succeed in a claim under the Workmen's Compensation Act either *A* or his legal representatives need not face any risk and the question of contributory negligence can never be taken as a defence. The only disadvantage is that the compensation amount is a fixed one. By preferring a claim under section 110-AA, only if he succeeds he gets either more or less as compensation. But it is very uncertain and subject to many 'ifs' and 'buts' and it is very risky also. As against a trouble-free, certain and assured amount under the Workmen's Compensation Act, is it really worthwhile for a worker to file a claim before Motor Accidents Claims Tribunal? Let us take for example, that *A* is unable to prove his claim before the Motor Acci-

dents Claims Tribunal and consequently his claim is dismissed. He cannot also make any claim under the Workmen's Compensation Act as this section precludes him from doing so. Then what will be his fate and in case of his death what will be be the fate of his legal representatives ? If *A*, happens to be a young employee who dies in an accident leaving behind a widow and an aged mother what will happen to them ? If a claim is made in the hope of getting more compensation under the Motor Vehicles Act, than under the Workmen's Compensation Act and if the claims fails, it virtually throws out the claimant in the street and section 110-AA completely takes away the absolute rights and privileges conferred under the Workmen's Compensation Act. This really is a most unhappy and unwanted situation. After all the interest of the workman should be protected by all means. Simply for want of proper advice or due to avarice a claim is made for a larger amount under the Motor Vehicles Act, he should not be deprived of the legal and assured amount which he should normally and easily get under the provisions of the Workmen's Compensation Act, but for this section. My point is that the provisions of section 110-AA should not be in such a way as to virtually snatch away the right of a claimant under the Workmen's Compensation Act. The right under this section should be in addition to the right conferred under the Workmen's Compensation Act.

Even in this case, we meet with the following difficulties : (*a*) In a petition before the Motor Accidents Claims Tribunal in cases under 3 and 4 cited above the employer of *A* will not be a party. (*b*) In the petition before the Commissioner under the Workmen's Compensation Act, driver *X* and his employer will not be parties. (*c*) A Tribunal constituted under the Motor Vehicles Act cannot award any compensation contemplated under Schedule IV of the Workmen's Compensation Act. (*d*) Similarly the Commissioner under the Workmen's Compensation Act cannot invoke the provisions of the Motor Vehicles Act while deciding the case under the Workmen's Compensation Act.

Section 110-AA of the Motor Vehicles Act instead of making the process of getting compensation by a poor workman easier, makes it more complicated, difficult, uncertain and risky and also takes away the rights conferred under the other Act. Then again there is the difference in the period of limitation for filing claim petitions. Under the Motor Vehicles Act, it is six months and under the Workmen's Compensation Act it is two years.

Therefore, I feel that this new section 110-AA is either unnecessary or it may be suitably amended in such a way to that the right under the Workmen's Compensation Act is neither taken away nor abridged even in cases where the workman opts to file a petition under this section. If at all any compensation is awarded by the Motor Accidents Claims Tribunal, it should be in addition to the assured amount under the Workmen's Compensation Act. Of course the Motor Accidents Claims Tribunal while awarding compensation in fit cases may take into consideration, the amount that may be awarded under the Workmen's Compensation Act. In cases of dismissal of the application under the Motor Vehicles Act, the workman should be at liberty to proceed under the Workmen's Compensation Act.

This again will create another problem *viz.*, whether the Motor Accidents Claims Tribunal should wait till the decision under the Workmen's Compensation Act becomes final. If that is so, the very purpose of the summary proceedings, contemplated under the Motor Vehicles Act will be defeated. It may also be argued

that the basis on which the compensation is granted under both these Acts is different. Therefore why not they be decided independently and separately? This again poses the same question, namely, what is the necessity for this new section 110-AA and what purpose does it actually serve.

Now coming to the discussion on the example given as No. 1 above, though *A* can prefer his claim before both Tribunals, virtually he cannot file any claim under section 110-AA because the accident was due to his own negligence.

Regarding the case under example (2) he faces the same difficulties mentioned in the previous paragraphs if the claim is made before the Motor Accidents Claims Tribunal.

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[END OF VOLUME (1975) II M.L.J. (Journal).]